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**SUPREME COURT OF THE UNITED STATES**

**OCTOBER TERM, 1948**

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**No. 330**

**THE UNITED STATES OF AMERICA, APPELLANT**

**VS.**

**THE INTERSTATE COMMERCE COMMISSION,  
THE UNITED STATES OF AMERICA,  
THE PENNSYLVANIA RAILROAD COMPANY, *et al.***

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**APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

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**FILED SEPTEMBER 30, 1948**



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In the District Court of the United States  
For the District of Columbia

Civil Action No. 4729-47

UNITED STATES OF AMERICA, PETITIONER

v.

INTERSTATE COMMERCE COMMISSION

and

UNITED STATES OF AMERICA, DEFENDANTS

THE PENNSYLVANIA RAILROAD COMPANY,

THE VIRGINIAN RAILWAY COMPANY,

SOUTHERN RAILWAY COMPANY,

ATLANTIC COAST LINE RAILROAD COMPANY,

SEABOARD AIR LINE RAILROAD COMPANY,

NORFOLK SOUTHERN RAILWAY COMPANY,

INTERVENERS.

*Reporter's Transcript of Proceedings—Filed September  
13, 1948.*

Washington, D. C.,

Wednesday, May 5, 1948

This cause came on for hearing at 10 a. m. before the  
Three-Judge Court:

Hon. BENNETT CHAMP CLARK, Associate Justice of the  
United States Court of Appeals for the District of Colum-  
bia;

Hon. MATTHEW F. MCGUIRE, Associate Justice of the  
District Court of the United States for the District of  
Columbia;

2 Hon. ALEXANDER HOLTZOFF, Associate Justice of  
the District Court of the United States for the Dis-  
trict of Columbia.

APPEARANCES:

For the United States, petitioner: Mr. James E. Kilday,  
Mr. David O. Mathews, Special Assistants to the Attorney  
General; Mr. Frank F. Vesper, Mr. James C. Moore, Spe-  
cial Attorneys.

For the Interstate Commerce Commission: Mr. Daniel  
W. Knowlton, Chief Counsel.

For the United States, defendant: Mr. John F. Baecher,  
Special Assistant to the Attorney General.

For The Pennsylvania Railroad Company: Mr. Windsor F. Cousins, Broad Street Station Building, Philadelphia 4, Pennsylvania; Mr. Hugh B. Cox, Southern Building, Washington 5, D. C.

3 For the Virginian Railway Company: Mr. Martin A. Meyer, Jr., Investment Building, Washington, D. C.

For Southern Railway Company: Mr. Charles Clark; Mr. A. J. Dixon, P. O. Box 1808, Washington, D. C.

For Atlantic Coast Line Railroad Company, Seaboard Air Line Railroad Company, and Norfolk Southern Railway Company: Mr. Charles P. Reynolds, 1110 Shoreham Building, Washington 5, D. C.

4-5 *Proceedings*

Mr. O'DONOGHUE. If the Court please, I would like to introduce Mr. David O. Mathews and Mr. James Moore of the Department of Justice and move their admission for the purposes of this case. Mr. Mathews is a member of the Bar of the United States Supreme Court and of the Supreme Court of the State of Nebraska.

STATEMENT TO THE COURT ON BEHALF OF THE  
UNITED STATES, DEFENDANT

Mr. BAECHER. If the Court please, my name is Baecher. I am the First Assistant in the Antitrust Division.

At the direction of the Attorney General, I wish to say a brief word with respect to the role of the United States as a defendant in this case. By law, as the Court knows, any suit to set aside an order of the Interstate Commerce Commission must be maintained against the United States; but the Commission has a statutory right to defend its orders, irrespective of what the United States may do. And because of the fact that the United States is also prosecuting this appeal on behalf of the War Department, it has filed an answer which in effect withdraws its participation as a defendant, leaving that function to the capable hands of Mr. Knowlton, Chief Counsel of the Interstate Commerce Commission.

6 Justice CLARK. What is the idea of counsel about the time?

Mr. MATHEWS. If the Court please, we have attempted to make some estimates and we feel we can cover our argument in approximately two hours, and possibly less, depending upon the discussion which may ensue.

Mr. KNOWLTON. I think I will want a little short of an hour—and Mr. Cousins of the Pennsylvania.



3  
Mr. Cox. I might at this time introduce Mr. Cousins to the Court. Mr. Cousins is a member of the Bar of the State of Pennsylvania and is also a member of the Bar of the Supreme Court of the United States. I should like to move his admission for the purposes of this case; and, with the Court's permission, he will make the argument for the intervening railroads in the case.

I think Mr. Cousins would like about an hour, and perhaps a little less, if that is agreeable to the Court.

Justice CLARK. The Court is not disposed to cut down the time for a full argument, but we would like to have these arguments shortened, if it can be done for the proper presentation. That is to say, it will run very late this afternoon if everybody takes the full time suggested. So you may proceed, and we will give you all the time you need; but if the argument can be abbreviated, we would like to have it done.

7 You may proceed.

( OPENING ARGUMENT ON BEHALF OF THE  
UNITED STATES, PETITIONER

Mr. MATHEWS. If the Court please, we have prepared and the Secretary of the Interstate Commerce Commission has certified as a true and correct copy the entire record made in the proceeding before the Interstate Commerce Commission entitled "United States of America, Complainant, versus Aberdeen & Rockfish Railroad Company and others, Docket No. 29117," and we offer in evidence this record.

Mr. Cox. No objection.

Mr. MATHEWS. This case involves the railroads' export rates from interior points in the United States to Norfolk, Virginia. Export rates apply exclusively to export traffic, and they never apply to domestic traffic, that is, to traffic which is not to be transported beyond the ports.

Export traffic must be interchanged with water-carriers. This requires that the traffic be removed from railroad cars and placed at some point adjacent to ships, within the reach of the ships' tackle. Thus, to complete this interchange, piers or some other means must be available in order to accomplish the interchange. Usually, railroad cars are moved to points on piers adjacent to ships, and the traffic is removed from the railroad cars by hand and loaded on the piers. From these points the traffic is lifted by the ship's tackle and deposited in the hold of the ship.

8 For more than fifty years the railroads serving the port of Norfolk, Virginia, have provided as a part of the service

included in their export rates the piers needed to accomplish this interchange of traffic between railroad cars and ships. This function is commonly known as wharfage; and, in addition, the railroads have provided the labor needed to accomplish the unloading service.

Among other piers at Norfolk, Virginia, were those known as Army Base Piers 1 and 2. These facilities were constructed by the Government during the First World War and, after the conclusion of hostilities, these piers were leased to the City of Norfolk.

Subsequently, the piers were leased by the Government to the Transport Trading and Terminal Corporation, also a private concern. The Transport Trading and Terminal Corporation continued in possession of the piers until on or about June 15, 1942.

Each of these lessees or pier operators employed people to unload traffic from railroad cars, and for other purposes. These lessees or pier operators made charges for the use of the piers and for the handling services provided in unloading traffic to the floor of the piers.

For many years these pier operators charged one cent per hundred pounds for use of the piers, and three cents per hundred pounds for unloading traffic from railroad cars, making a total expense of four cents per hundred pounds involved in interchanging traffic from railroad cars to ships.

The railroads made arrangements with the operators of Army Base Piers 1 and 2 pursuant to which the pier operators permitted the railroads to bring cars upon the piers, and the pier operators performed the service of unloading traffic from the railroad cars to the floor of the piers so that it might be transferred to the ships. And, as I have indicated, the railroads paid the pier operators four cents per hundred pounds for this service.

The railroad tariffs, which are the scheduled rates, containing not only the scheduled rates but also the terms and conditions under which transportation shall be performed, which are filed with the Interstate Commerce Commission and which are published at various places on the lines of the rail carriers, specifically provided, during the entire period covered by this complaint, that the carriers would absorb from these export rates the cost of wharfage, that is, for use of the piers and the handling service involved in transferring the traffic from railroad cars to ships.

In other words, under these export tariffs, upon payment of the export rates to the port, a skipper purchased



transportation service, including the line haul from the interior points to Norfolk, and in addition the use of the piers and the handling service involved in unloading the traffic.

There was nothing new or novel in this arrangement. For more than fifty years it has been the general practice of railroads serving North Atlantic ports to absorb this expense from their export rates paid to them by shippers of export traffic. During this period of time, the facilities and services so provided were available to all shippers, including the Government.

In other words, for more than fifty years it has been the general practice of all railroads serving the North Atlantic ports to provide wharfage in the handling and servicing of the export traffic, as part of the service provided by them in return for payment by shippers of the export rates.

With the rapid increase of its traffic during 1942, traffic which was to support military and naval forces overseas, the Government became the principal shipper over Army Base Piers 1 and 2, and, as a result, on or about June 15, 1942, the Government cancelled the lease, 11 due to war conditions, and took control of the piers, in order to expedite the movement of freight and for security and other reasons.

However, the Government retained the entire organization of the preceding pier operator, the preceding lessee, the Transport Trading and Terminal Corporation, and the services continued to be performed in exactly the same way as they had been performed by the Transport Trading and Terminal Corporation.

Notwithstanding this change in control, the railroads made or continued provisions for their published export rates to continue to apply to traffic which was interchanged with ships over Army Base Piers 1 and 2, and commercial traffic continued to move over Army Base Piers 1 and 2, to the extent that military requirements would permit.

In view of the fact that Army Base Piers 1 and 2 and the loading and unloading services thus provided by the Government had been regarded and included for more than twenty years as transportation facilities and services included in the carriers' export rates in traffic moving over the piers, the Government, through its War Department, requested the railroads to make it an allowance, as a shipper, for the expense incurred in providing the piers and handling service on traffic moving over those piers.

This request was predicated upon the well established proposition that where a shipper provides transportation facilities and services included in the common-carrier obligation, he is entitled to receive a just and reasonable allowance from the carriers for the facilities and services so provided.

Although the record shows that this expense exceeded four cents per hundred pounds, after control of the piers was taken over by the Government, the Government sought from the railroads only an allowance equal to that which they had been paying to the Transport Trading and Terminal Corporation for the use of the piers and for the services.

The railroads refused to make any allowance whatever to the Government. Although other reasons were assigned after litigation before the Commission was commenced, the railroads initially assigned for the reason—and I quote:

“Where the control or operation of piers or other facilities is taken over by the Government for its own use or they are operated under contract with the Government and under Government supervision, such facilities or piers should be treated the same as piers operated or controlled by the owners of the property transported and loading and unloading should not be performed by the carriers, nor any allowance made in lieu thereof.”

Thereafter, and after the railroad position had been made clear, the Government requested the railroads to perform the handling services over Army Base Piers 1 and 2 to the extent that the handling services were included in the export rates paid by the Government on its export traffic.

In other words, many if not most of these tariffs continued to provide that the expense would be absorbed by the railroads. So that the Government, as an alternative, suggested that the railroads come on the piers and perform the handling service. This request was refused on the same ground, on the issue of control.

And again on November 9, 1943, the Government renewed its demand that the railroads provide wharfage and handling services, but the railroads again refused to comply with this request.

As late as May 3, 1946, some of the tariffs covering export traffic moving over Army Base Piers 1 and 2 provided that the cost of wharfage and handling services involved in interchanging such traffic from the cars to the ships

would be absorbed by the railroads. The railroads continued to provide the piers and perform the handling services at all other points in the Norfolk port district, or to make an allowance for wharfage and the handling services.

In other words, the railroads continued to exact from the Government the same rates for less service on traffic moving over Army Base Piers 1 and 2, that they had charged private or commercial shippers whose traffic moved over those piers prior to June 15, 1942; and they continued to charge the Government, on its export traffic moving over those piers, the same rates for less service, notwithstanding the fact that they contemporaneously provided wharfage and handling service for shippers at other points in the Norfolk port district.

On April 15, 1944, the Government filed with the Commission, the Interstate Commerce Commission, a complaint against the railroads, attacking their failure and refusal to make the Government any allowance for the piers and handling services provided by the Government on its export traffic after June 15, 1942.

After a hearing before an examiner assigned by the Commission, he made a report proposing that the Government's complaint be dismissed. Subsequently, on August 3, 1945, Division Two of the Commission, consisting of three members of the Commission, reversed the examiner and held for the Government, and ordered that reparation be paid.

Thereafter, on May 3, 1946, the entire Commission reversed Division Two, with Commissioners Aitchison, Splawn, Alldredge, and Rogers dissenting.

Subsequently, on July 25, 1947, the entire Commission affirmed its first, by a vote of six to five, with Commissioners Splawn, Johnson, Rogers, Alldredge, and Aitchison dissenting.

It appears from the Commission's report made on July 25, 1947, in support of its order, finally dismissing the Government's complaint, that the railroads are again absorbing from export rates applicable over Army Base Piers 1 and 2 the cost of wharfage and handling services. So that the Commission's decision of July 25, 1947, the last decision, involved only the question whether the Government is entitled to reparation for providing wharfage and handling service on this traffic that moved over the piers from June 15, 1942, until on or about July 25, 1947. I do not know the precise date that the railroads again absorbed this expense.



Thus the Government's complaint was dismissed, and it has received no compensation from the railroads for wharfage and handling services since June 13, 1942, except for certain sums paid by one railroad aggregating approximately \$865,000 during the course of litigation before the Commission.

This case has been brought under the Urgent Deficiencies Act of October 22, 1913, to set aside and enjoin the Commission's order made on July 25, 1947, and to have the proceeding remanded to the Commission for further action not inconsistent with this Court's opinion.

The Commission has set up in defense of this case that this Court lacks jurisdiction to hear and determine this controversy; and the railroads affected by the Commission's order have intervened and have pleaded a similar defense. In addition, both the Commission and the railroads are defending the order of dismissal on its merits.

The jurisdictional statute upon which this case is brought provides plainly—and I quote:

"The district courts shall have original jurisdiction

"Of cases brought to enjoin, set aside, annul, or suspend in whole or in part any order of the Interstate Commerce Commission."

The Government believes that the question of jurisdiction thus presented by the pleadings is controlled by the Supreme Court's decision in *El Dorado Oil Works versus United States*, 328 U. S. 12, decided in 1946. There El Dorado had commenced an action in the district court to recover upon its contract with the General American Tank Car Corporation certain payments made by the railroads under their tariffs to the Tank Car Corporation as allowances for the use of tank cars the Tank Car Corporation had leased to El Dorado for a stipulated sum per car per month.

The Tank Car Corporation defended this action, on the ground that for it to make payment in excess of the stipulated rentals, which El Dorado by the agreement in question had undertaken to pay to the Tank Car Corporation for the use of its cars, would be unlawful, because the payments would constitute a rebate and thus would be contrary to the Interstate Commerce Act. The district court sustained this defense; but this decision was reversed by the circuit court of appeals.

On certiorari to the Supreme Court, it held that the district court had jurisdiction to hear and determine the

case, but, before the district court could proceed, that the Interstate Commerce Commission should determine whether payments of the allowances in excess of the stipulated rentals which El Dorado had agreed to pay the General American Tank Car Corporation would be lawful and valid, as required by the primary jurisdiction doctrine.

Undoubtedly the Court is familiar with the well established proposition that determination of the question whether a rate, a rule, a regulation, a practice, or an allowance is a just or reasonable discriminatory or otherwise unlawful one under the Interstate Commerce Act is a matter within the initial and exclusive jurisdiction

18 of the Interstate Commerce Commission. This proposition was initially established in *Texas and Pacific Railway Company versus Abilene Cotton Oil Company*, 204 U. S. 426, decided in 1907, and it is now firmly imbedded in the law. The proposition is commonly referred to as "the Abilene rule," and as the primary jurisdiction doctrine.

The primary jurisdiction doctrine rests upon the proposition that equality in treatment can only be attained in the determination of the question whether rates, rules, regulations, and practices, and allowances of carriers are reasonable and lawful, if and unless such determination is left to the exclusive say-so of the Interstate Commerce Commission.

Were the courts to attempt to pass upon such questions, the uniformity which the Interstate Commerce Act tends or was adopted to achieve, would not result, for different courts would have different ideas as to whether a certain rate, for example, was just and reasonable; and thus shippers in one part of the country might be paying a rate entirely different from that paid by shippers in another part of the country.

The powers of the courts in relation to questions which have been exclusively committed under the Abilene rule is limited to passing upon questions of law arising from determinations of questions of fact by the Commission, that is, whether there is a rational basis for the Commission's conclusion, whether the findings support its ultimate conclusion, whether the evidence supports the findings, whether there has been any invasion of constitutional rights.

Pursuant to the Supreme Court's decision, El Dorado commenced a proceeding against the railroads before the Commission, seeking a determination by the Commission that the Tank Car Corporation could make the payments

provided for in its contract with El Dorado without violating the Interstate Commerce Act.

After hearing, the Commission found that any payment by the Tank Car Corporation to El Dorado in excess of the monthly rental which El Dorado had agreed to pay the Tank Car Corporation would constitute a rebate and discrimination and involve departure from the railroad's tariff rules applicable to such matters, and the Commission discontinued the proceedings.

Thereafter El Dorado brought suit in the district court under the Urgent Deficiencies Act—the jurisdictional statute here invoked by the Government—challenging the validity of the Commission's findings and its action of discontinuing the proceeding.

The Commission challenged the jurisdiction of the district court to hear and determine the case. The district court dismissed the complaint filed by El Dorado, 20 for lack of jurisdiction. On appeal, the Supreme Court reversed the district court on its determination of the jurisdictional question.

There is no substantial difference between the jurisdictional question presented in this case and the question decided in the El Dorado case. Both the El Dorado case and this case involve past practices, the question of allowances which either were made or should have been made in the past.

The Supreme Court based its decision in the El Dorado case on the proposition that legal consequences would follow the Commission's decision which would finally fix a right or obligation. The same result will follow in this case if the Commission's order is allowed to stand. For this reason the Court concluded, in the El Dorado case, that the Commission's action fell within the class of orders which *Rochester Telephone Corporation versus United States*, 307 U. S. 125, held to be reversible by a district court of three judges.

Justice HOLTZOFF. What is the citation of the El Dorado case?

Mr. MATHEWS: That is 328 U. S. 12.

Justice HOLTZOFF. Thank you.

Mr. MATHEWS. Incidentally, your Honor, we will have a brief to submit at the conclusion of the argument 21 which will contain all these citations.

Thus we think that the El Dorado case establishes clearly that this Court has jurisdiction to entertain the controversy.



In the past, three-judge courts have declined to entertain complaints filed to set aside orders of the Commission denying reparations upon various grounds. Examination of these prior decisions discloses that these rulings have been predicated in whole or in part upon one, the negative order doctrine; two, the alternative remedies provided by Section 9 of the Interstate Commerce Act; three, the asserted private character of claims concerning past shipments, as distinguished from the quasi-legislative nature of complaints seeking different rates for the future; and, four, an asserted discretionary power in the Commission to pass upon complaints attacking past rates and practices without observing the statutory standards established by the Interstate Commerce Act.

We believe that all of these grounds either have been expressly repudiated by the Supreme Court, or they have no application under the facts in this case.

As denial of judicial review upon these grounds usually involved two or more of them, it is necessary that the relations of each ground asserted in the past be discussed in connection with the other grounds upon which  
22 the courts have relied.

In other words, we contend that the grounds here urged to justify lack of the jurisdiction of this Court either were corollaries of the negative order doctrine and fell with the negative order doctrine in the Rochester case, or they were entwined with the negative order doctrine in such a way as to obscure the proper application.

As I have indicated, the Supreme Court held in the Rochester Telephone Corporation versus United States that the negative order doctrine as theretofore understood would no longer be controlling upon three-judge courts convened under the Urgent Deficiencies Act.

In brief, this doctrine was that an order of the Commission which merely dismissed a complaint, as in this case, and which did not carry with it the duty on the part of some respondent to take affirmative action, was not an order within the meaning of the jurisdictional statute which I have read to the Court.

The negative order doctrine was first announced in Procter & Gamble versus United States, at 225 U. S. 282. There the shipper had attacked certain regulations which required the shipper to pay demurrage—that is, a charge for the delay of cars—to the railroads while cars owned by the shipper were standing loaded on its privately owned track.

The shipper sought reparation for the demurrage collected by the railroads.

The Commission dismissed the complaint, and the shipper brought suit to set aside the order of the Commission denying relief. The court held it had jurisdiction to set aside the order of the Commission and, as a corollary of this power, the court decided it had jurisdiction to award damages for demurrage exacted in the past.

However, the Supreme Court reversed the lower court on the question of jurisdiction. The Supreme Court based its decision upon its conclusion that the jurisdictional statute applied only to affirmative orders of the Commission, that is, that that gave the court the right to entertain complaints only where the Commission's order required the duty of obedience.

In the case of *Hooker versus Knapp*, 225 U. S. 302, decided the same day as the *Procter & Gamble* case, the Court explained in greater detail the reason why it had concluded that the jurisdictional statute only embraced affirmative orders. These reasons were that the court was not an appellate court, which received a record from a tribunal below, and that the court had no means of making its mandate effective.

However, the Supreme Court in the *Rochester* case clearly exposed the fallacy of this view. As Mr. Justice Frankfurter pointed out, *Procter & Gamble* was authorized under

Section 13 of the Interstate Commerce Act to institute the proceeding before the Commission; and since *Procter & Gamble* asserted a legal right, under the Interstate Commerce Act, to have the Commission apply different principles of law than those which led the Commission to dismiss the complaint, the ingredients for an adjudication, constituting a case or controversy, were present.

Mr. Justice Frankfurter further pointed out that judicial relief would be precisely the same in the *Procter & Gamble* case as in the recognized instances of review by courts of Commission action. That is, if the legal principles upon which the Commission acted were not erroneous, the complaint would be ordered dismissed. If the Commission was found to have proceeded on erroneous legal principles, the Commission would be ordered to proceed within the framework of its own discretionary authority, on the indicated correct principles.

Mr. Justice Frankfurter also pointed out that the lack of ability on the part of a three-judge court to bring its mandate to bear was not controlling

Under Section 13 of the Interstate Commerce Act, the Commission is required to investigate the matters complained of, to state its conclusions, together with its decision, order, or requirement in the premises. If the order of the Commission is set aside without further relief, it still remains the duty of the Commission to enter an order and make a report consistent with the law.

The lack of substance in the grounds urged by the Supreme Court in the Procter & Gamble and in the Hooker cases is dramatically illustrated by the El Dorado case. There the lack of means on the part of the district court to bring a ~~mandate~~ to bear did not prevent judicial review.

The Commission's order in the El Dorado case was sustained on its merits. But if the Commission's order in that case had been set aside by the court, the Commission would have been required to reopen the proceeding and proceed in accordance with the indicated correct principles, as pointed out by Mr. Justice Frankfurter in the Rochester case.

In fact, the Commission for many years has been doing precisely the same thing, in cases where the courts have entertained jurisdiction. Thus where an order involving rates for the future has been set aside by a three-judge court, the proceeding before the Commission has been reopened and further considered and redecided, either upon the record originally made or upon new evidence, if such seems to be necessary, in order to comply with the court's decision.

In other words, the relationship between the Commission and the courts, in cases where the Commission's orders indisputably are subject to the jurisdiction of the courts, has been in the nature of a relationship between inferior and superior courts.

The Supreme Court's holding in the Procter & Gamble case indicates that theretofore—that was in 1912—except for the negative order policy, the courts have jurisdiction of suits brought to set aside orders of the Commission denying reparations. In any event, it seems clear that the denial of review in the Procter & Gamble case was based solely on the negative order doctrine, and that the grounds now urged were to make their initial appearance later and in connection with cases where the negative order doctrine was held to preclude judicial review.

We believe that the alternative remedies doctrine simply has no application to this case.



Under the Abilene rule the Commission had the initial and exclusive jurisdiction of this controversy, and the courts lacked jurisdiction to entertain the controversy.

The alternative remedies doctrine rests upon what we believe to be an erroneous construction of Section 9 of the Interstate Commerce Act. Section 9 provides, in substance, that any person claiming to be damaged by any common carrier subject to the Act may either make a complaint to the Commission or to any district court or circuit court of the United States of competent jurisdiction; but  
 27 such person shall not have the right to pursue both of said remedies and must in each case elect which one of the two methods he will adopt.

Obviously, institution of an action before the district court under the Urgent Deficiencies Act—the Act which the Government has here invoked—to review an order of the Commission denying recovery of damages, cannot be construed to constitute the pursuit of the other alternative remedy referred to in Section 9 of the Act, for the remedies invoked in the proceedings before the Commission and the court are entirely different.

The proceeding before the Commission is against the railroads, to recover damages on account of alleged or challenged past practices, whereas the action before the three-judge court is against the United States and not the railroads; and the only remedy available is to enjoin, set aside, annul, or suspend, in whole or in part, any order of the Interstate Commerce Commission.

In other words, an action brought under the Urgent Deficiencies Act is not a trial *de novo*, but it is a special statutory proceeding essentially of an appellate character.

It is well established that three-judge courts convened under the Urgent Deficiencies Act lack the power to determine questions entrusted by Congress to the Commission; but the alternative remedy set forth in Section 9  
 28 clearly refers to matters within the jurisdiction of both the Commission and the courts.

Section 9 refers to original actions which can be brought before either the Commission or the court, and to seek identical relief. Section 9 has nothing whatever to do with judicial review, but refers to concurrent jurisdictions which were not available to the Government in this case.

It will not be questioned in this case, I am sure, that the proceeding before the Commission here sought to be reviewed involved a matter which, under the primary juris-

diction doctrine, was within the exclusive and initial jurisdiction of the Commission.

In the Abilene case—and that is the case where the primary jurisdiction doctrine was initially established—the Supreme Court held, as a corollary to the primary jurisdiction doctrine, that the independent right of an individual originally to maintain actions in courts to obtain pecuniary redress for violation of the Interstate Commerce Act, conferred by Section 9, is confined to redress of such wrongs as can, consistently with the context of the Act, be redressed by courts without previous action by the Commission.

In other words, after the Abilene case, Section 9 applied only to cases within the jurisdiction of both the courts and the Commission, and Section 9 did not apply to questions such as whether a rate, rule, regulation, or practice was just or reasonable or discriminatory, because that was a matter within the initial and exclusive jurisdiction of the Commission.

Thus it seems clear that Section 9 applies only to cases which require the interpretation of railroad tariffs, as distinguished from cases which require determination of whether a rate or rule or regulation or practice is unlawful under the Interstate Commerce Act.

It may be contended that the interpretation of Section 9 made in the *Standard Oil Company versus United States*, 283 U. S. 235, is controlling here. However, the *Standard Oil* case is easily distinguishable from this case. In the *Standard Oil* case the shipper brought a proceeding against the railroads, before the Commission, to recover certain alleged overcharges.

By "overcharges," I mean charges which either were not provided for in the carrier's tariffs or were contrary to the charges provided for in the carrier's tariffs—a question which normally was within the jurisdiction of both the Commission and the courts.

The Commission dismissed the proceeding, and thereafter the *Standard Oil Company* brought a suit in the district court against the United States, the Commission, and some fifty railroads, under the provisions of the Urgent Deficiencies Act, seeking an order from the court directing the Commission to grant the prayer of *Standard Oil Company's* complaint before the Commission, a finding by the court that *Standard Oil* had been overcharged to the extent alleged, and directing the Commission

to accord a further hearing for the purpose of ascertaining the amount of damages sustained by Standard Oil under the finding sought by Standard Oil from the court.

The Supreme Court held that judicial review was precluded under the negative order doctrine—which was, of course, overruled by the Supreme Court in 1939, in 307 U. S., years later.

In addition the Court held that the case involved a question within the primary jurisdiction or Abilene rule, whether or not there were overcharges, as Standard Oil contended. And the Court further held, assuming the three-judge court had jurisdiction of the case, that no error vitiating the Commission's position had been shown. In other words, in the Standard Oil case the Supreme Court passed on the merits of the controversy, even though it did involve a matter within the Commission's exclusive jurisdiction.

Finally, the Court pointed out that even if the claim only involved overcharges, as claimed by Standard Oil, Section 9 barred maintenance of the action, because Standard Oil sought relief on the merits of its claim, which it had failed to secure from the Commission—a claim within the jurisdiction of a one-judge court, and beyond the jurisdiction of a three-judge court convened under the Urgent Deficiencies Act.

In other words, the Supreme Court held that under the Urgent Deficiencies Act it had no jurisdiction of the claim actually pleaded by Standard Oil, because it initially should have been brought before a one-judge court, and a three-judge court had no right to entertain such an action.

Here we have an entirely different situation. Only the Commission and the United States were made defendants. No damages are sought in this action; and it is impossible to recover damages here, because that is beyond the function of this Court. Whereas in the Standard Oil case the plaintiff joined the railroads and sought to recover damages, the same relief it had failed to secure from the Commission.

Here we seek only judicial relief within the Court's competence, while there the shipper sought relief extending far beyond the relief which three-judge courts are authorized to grant.

Thus it seems clear to us that the Court's discussion regarding Section 9 was dictum, and, in any event, that



32 the discussion stands only for the proposition that the relief sought by Standard Oil was beyond the jurisdiction of a district court as ordinarily constituted, because of an election of remedies under Section 9; and beyond the jurisdiction of a three-judge court, because relief on the merits of Standard Oil's claim could only have been granted by a one-judge court.

Further, it is clear that the entire discussion of Section 9 was based on the assumption that only overcharges were involved. So that to the extent the Standard Oil case is pertinent to the question of judicial review by three-judge courts, it is applicable only to cases involving overcharges, and it has no pertinency to cases presenting questions within the exclusive jurisdiction of the Commission, such as this case.

As it is clear that the Supreme Court's decision respecting Section 9 in the Standard Oil case pertained only to overcharges, cases such as *Brady versus Interstate Commerce Commission*, 43 Federal (2d) 847, which was affirmed 283 U. S. 804; *Baltimore & Ohio R. Co. versus Brady*, 61 Federal (2d) 242, reversed at 288 U. S. 448; and *Atlantic Lumber Corporation versus Southern Pacific Company*, 47 Federal Supplement 511, have no relevancy here, for those cases involved questions within the jurisdiction of both the courts and the Commission.

33 Other cases sometimes cited for the proposition that Section 9 precludes maintenance of actions before three-judge courts and reviewing orders of the Commission denying reparations are *George Allison and Company versus United States*, 12 Federal Supplement 862, affirmed 296 F. S. 546, and *Ashland Coal & Ice Company versus United States*, 61 Federal Supplement 708, affirmed 325 U. S. 840. However, the evidence is compelling that the decisions in those cases rested upon other grounds.

The Supreme Court has never reversed, modified or criticized its decision in the *Abilene* case, that—

"The independent right of an individual originally to maintain actions in courts to obtain pecuniary redress for violation of the Interstate Commerce Act conferred by Section 9 must be confined to redress of such wrongs as can, consistently with the contest of the Interstate Commerce Act, be redressed by courts without previous action by the Commission."

Both the *Allison* and the *Ashland* cases involved matters within the exclusive jurisdiction of the Commission, and

hence Section 9 having no application to such cases, that having been held in the Abilene case, there simply is no support for the proposition that Section 9, under any interpretation of Section 9, could preclude judicial review.

34 In other words, it seems clear that those cases do not rest upon any estoppel against the shipper, for no estoppel can be predicated upon a shipper's action in bringing a proceeding before the Commission as the necessary result of a choice of the alternative remedies provided for in Section 9, where the shipper had no right to bring a proceeding seeking the same relief before the courts and thus had no choice of remedies in fact.

Furthermore, other circumstances support the view that both the Allison and the Ashland cases were decided by the Supreme Court on other grounds. The Allison decision rested upon the negative order doctrine, which was thereafter set aside in the Rochester case, and the district court failed to mention Section 9. It does not appear that any oral argument was made in the Supreme Court, and no opinion was filed.

The Standard Oil case was cited by the Supreme Court in support of its action in the Allison case; but the decision in the Standard Oil case also rested upon the negative order doctrine, which is now thoroughly discredited.

The Ashland case was decided by the district court both upon jurisdictional grounds and upon the merits. On appeal of the Ashland case to the Supreme Court, it does not appear that any oral argument was made to the  
35 Court, and no opinion was filed. Instead, the decision was that "The motions to affirm are granted and the judgment is affirmed," which usually denotes that the Supreme Court decided the case on its merits.

Finally, the El Dorado case, the case upon which the Government relies in this action, was decided by the Supreme Court subsequent to all the decisions which I have discussed.

The anomalous result of any holding that Section 9 precludes judicial review of the Commission's orders denying reparations is illustrated by the Supreme Court's opinion in the El Dorado case. There it is shown that a case attacking past practices, attacking the question of allowances made or that should have been made in the past, may be commenced in the district courts; that the action in the district court may be suspended pending determination of those questions by the Commission; that the Commission's

determination may be challenged before a three-judge court such as this one, and thus require the Commission to proceed in accordance with the indicated correct legal principles; and, if ultimately successful before the Commission, the plaintiff may return to the district court before which the case was instituted originally for entry of a judgment for the damages sustained by him.

36. Yet it has been contended that where the shipper brings such a proceeding before the Commission, and thus avoids these complicated and time-consuming steps, he cannot question an adverse result because of an election of remedies under Section 9—a contention which we believe the Supreme Court's opinion in the El Dorado case demonstrates to be highly technical and without substance.

The elementary injustice of the contention that orders denying recovery of reparations are not subject to judicial review because institution of the proceeding before the Commission constitutes an election of remedies under Section 9 is illustrated by the fact that where orders for reparations are entered by the Commission, judicial review is available to the carriers when the shipper seeks to enforce the reparation order.

In other words, a carrier against whom a reparation order is entered has an appropriate opportunity to challenge the validity of the order. Yet any holding that Section 9 precludes judicial review will result in a situation where an unsuccessful claimant before the Commission is denied similar and equal review.

37. It has also been contended that judicial review of orders denying reparation should be denied to the courts because of the private, as distinguished from the public character of reparation cases. In other words, the thought is that where the Commission prescribes rates for the future, all shippers are affected by the Commission's order, and that this is not true in reparation cases. But there is no substantial basis for this view, for it is well established that any finding made by the Commission in a reparation case is available to all shippers similarly situated.

A finding as to past shipments inures to the benefit of all shippers who moved traffic at the same rate between points involved in the proceeding before the Commission. Moreover, the Supreme Court's decision in the El Dorado case involved only a controversy of a private character, as dis-



tinguished from a controversy of a public character. But this fact did not preclude the Supreme Court from holding that three-judge courts, such as this Court, have jurisdiction to set aside Commission orders denying relief. On the contrary, the Supreme Court held that such orders have legal consequences which finally fix a right or obligation, and that therefore the order is subject to judicial review.

The contention also has been made that whether the Commission should award reparation is a discretionary power conferred by Congress on the Commission. But there seems to be no substantial basis for this thinking.

Frequently the courts have referred to the fact that the Congress endowed the Commission with administrative discretion in such matters. But the use of such language normally indicates that this discretion may not be exercised arbitrarily or without evidence or contrary to law. The doctrine of administrative finality is used to indicate that an order is subject to judicial review on a narrow range of issues, and not to denote a lack of judicial review.

The standards which Congress has established to control cases involving past rates are substantially identical with the standards which control the prescribing of rates for the future. Based on a review of the standards which apply in the two kinds of cases, there would appear to be no substantial reason to preclude judicial review in one case and to deny it in the other.

Here we have a case where Congress has created a right in a shipper to recover damages from railroads resulting from violation of the Act. Where this right is violated by arbitrary action or by infringement on the law, it would seem elementary that the Commission's determination should be set aside and that the Commission should be required to proceed in accordance with the evidence and the law.

The intervening railroads have raised certain other jurisdictional questions to which I shall refer briefly. They have asserted that the Government may not maintain this action, because it must be brought against the United States.

As we view this question, essentially this case is an appellate proceeding, and we are merely following the prescribed procedure. If private shippers are entitled to judicial review of Commission orders denying reparations under this procedure, then it would seem clear that the Government is entitled to invoke the same procedure.

This action is unlike cases involving financial adjustments between executive branches of the Government, which obviously could be made by the Executive without resort to litigation.

The Government, as a shipper, has a right to just, reasonable and undiscriminatory treatment in the matter of rates, charges and allowances. This right is affected by the Commission's order made in this case, and thus we think this case presents a justiciable case for controversy within the meaning of the Constitution.

In fact, this question appears to have been settled by an opinion rendered in the District of Columbia. I refer to *United States versus Public Utilities Commission of the District of Columbia*, 151 Federal (2d) 609, 610, certiorari denied 331 U. S. 816. That was in 1947. There the Government secured judicial review of agency action taken by the Public Utilities Commission affecting public utility rates.

The Public Utilities Commission, of course, is a regulatory body of the Government. There appears to be no substantial difference between this case and the public utilities case.

The railroads also have questioned the right of the United States to maintain this action. But this question appears to have been settled in the Public Utilities case.

The Interstate Commerce Act confers on any body politic the right to complain of anything done or omitted to be done by any common carrier subject to the Act. For nearly forty years the Government has brought proceedings before the Commission in accordance with this right. Moreover, unlike some other cases, the Government cannot protect itself by invoking criminal or equitable procedure against the railroads, in the absence of the indispensable administrative determination required under the primary jurisdiction doctrine.

The Urgent Deficiencies Act does not undertake to limit the right to judicial review to any person aggrieved by the Commission's order; but it merely provides, without any limitation, that the district courts shall have jurisdiction to hear and determine cases attacking the Commission's orders.

Furthermore, it is well stated that there is no hard and fast rule excluding the sovereign where statutes confer rights on a person. And, finally, until the *Rochester* case, decided in 1939, the negative order doctrine

precluded judicial review of all orders of the Commission denying reparations, including those issued in proceedings commenced by the Government. So the fact that the Government heretofore has not sought judicial review should not be held to be significant.

If the Court please, on the merits of this matter I have asked Mr. Moore to present the argument; and, with your permission, he will discuss the merits of the complaint.

Justice CLARK. We will take a brief recess at this point, gentlemen.

(Following the recess:)

Justice CLARK. Gentlemen, before we proceed, the suggestion was made by counsel that you file a brief at the end of the hearing. If counsel have briefs to submit, the Court would be very glad to have them, and it would have been well for the Court to have them when we started, as it is then easier to follow. And if briefs are to be filed, it seems it ought to be possible to cut down on the argument to some extent.

You may proceed.

42      OPENING ARGUMENT ON BEHALF OF THE UNITED STATES.  
            PETITIONER (continued)

Mr. MOORE. May it please the Court, in the interest of time, then, I shall refrain from restating any of the facts, except where pertinent to the particular subject to which I wish to call the attention of the Court.

Justice CLARK. That is very desirable, unless there is a dispute as to some matter of fact.

Mr. MOORE. All right, sir. Unless it is absolutely necessary, I will refrain from repeating any of the facts, and we will attempt to cut down the argument as much as possible.

Justice CLARK. You may proceed.

Mr. MOORE. Mr. Mathews pointed out that the Government's complaint filed in this case before the Interstate Commerce Commission sought to recover damages sustained by the Government by reason of the fact that the railroads refused to perform wharfage and handling services on the traffic that moved after June 15, 1942, over these Army Base Piers 1 and 2 at Norfolk, Virginia. He also pointed out the circumstances under which the Commission has seen fit to dismiss the Government's complaint.

The Government contends that this order of dismissal by the Interstate Commerce Commission is vitiated by



errors of law and by misapplication of the statutory standards prescribed by Congress, and that the order lacks the requisite rational basis.

No doubt the Court is familiar with the well established rule that where a shipper provides a transportation facility or performs a handling service that is clearly within the common carrier obligation, the shipper is entitled to a just and reasonable allowance for the provision of the facility or for performing this service. It was under this rule of law that the Government brought its action originally before the Interstate Commerce Commission.

Under that rule, the Government feels it is entitled to an allowance by reason of the fact that, as Mr. Mathews pointed out, the Government itself provided the facilities and performed the wharfage and handling services—or performed the handling service, rather—on this traffic that moved over these piers after the Army saw fit to take them over due to the war emergency.

They requested that such an allowance be made, but the railroads refused; they refused to give the Government the allowance, and hence this action was originally initiated.

Mr. Mathews pointed out, also, the reasons given by the railroads for this refusal. Rather than quote from the railroads' letter of refusal, substantially it is that by reason of the fact that these piers were used to such an extent for the handling of the war traffic, the railroads felt that they were justified in treating the piers as private piers, and as distinguished from public piers.

In other words, they felt that the control that the War Department saw fit to exercise during war time justified them in refusing to perform this wharfage and the handling services, or to make an allowance to the Government in lieu thereof.

The general practice of the railroads had been, prior to June 15, 1942, and was thereafter and is now, to limit the number of piers over which handling services would be provided. But, as I shall attempt to point out later, their reasons therefor should not be applicable in this case; they have no application here.

As stated before, the railroads made their contention that the control as exercised by the Army either had the effect of converting the piers from public piers to private piers, or that under the circumstances they were justified in refusing to provide the piers and perform the handling services.

Justice CLARK. They still charged for them in the tariffs. didn't they?

Mr. MOORE. That is right—and I will come to that later, your Honor.

The Commission saw fit to sustain this contention of the railroads and to dismiss the Government's complaint. However, the Government submits that there  
45 is no rational basis for this decision on the part of the Commission.

If you examine the reports of the Commission that are set out as appendices to the petition, you will find that the Commission did not make any specific finding; it failed to make findings that the control that was exercised by the Army did in fact convert these piers from public to private piers. Nor in these reports did the Commission make any specific finding that the railroads were justified under the circumstances in treating these piers as private piers, as distinguished from public piers.

It is quite clear, however, from their reports that the Commission's decision regarding the private nature of these piers is predicated upon its conclusion that the Government controlled them and in fact did convert these piers from public piers to private piers, or that the railroads were justified under the circumstances in treating them as private piers.

It is likely that the Commission's failure to make these specific findings that are necessary resulted from the fact that the railroads advanced no substantial reason as to why the Army Base piers 1 and 2 by the Government either had the effect of converting them from public to private piers, or justified the carriers in so treating them.

Both the railroads and the Commission relied heavily upon a prior decision of the Commission in a case  
46 entitled Weyerhaeuser Timber Co. versus Pennsylvania Railroad, the citation of which is set out in the brief. The Commission clearly stated the reasons, in the Weyerhaeuser case, for the general policy of the railroads, as I mentioned before, or refusing to load or unload freight over private piers, and those reasons, as stated by the Commission in the report, are these—and I quote from the report:

“The reasons for this policy are the difficulties of policing the practice, the necessity of performing the handling at the rail carriers' own convenience, the economy resulting from the concentration over a limited number of piers, and the conservation of revenue.”

But the Government feels that these reasons, as set out by the Commission, for this general policy on the part of the railroads, fall of their own weight when applied to the circumstances involved in this case.

47 We would like for you to consider these four reasons for just a moment. The first reason given by the Commission was the difficulty of policing this traffic that moved over the piers. However, to contend successfully that the difficulty of policing the practice provides a rational basis for the railroads' refusal to handle freight over these piers, there must be a corresponding showing that the Government, unless policed, intended to divert this traffic from export to domestic destinations and at the same time to seek the export rates on the traffic thus converted from export to domestic; or that the Government intended to take some action that would be detrimental to the interests of the railroads.

However, the record in this case contains no such showing by the railroads. On the contrary, the railroads accepted payment for the transportation services rendered, based on the export rates, as your Honor suggested. In fact, it is also clear from the record—and the fact was undisputed—that there was at all times during the period here in controversy a joint agent of the railroads who maintained an office and operating crews; that is, an office force, at the piers at all times; and that two or three times this joint agent of the railroads would submit reports to the Government representatives in charge of the operation of the piers, these reports so submitted by this joint agent containing, among other things, information as to whether or not the particular shipments listed on the reports was destined for export.

So the necessity for policing the practice is absent here; and, in fact, the railroads were in a position to police the practice if they had found it necessary to do so.

The Commission failed to make any finding that reasonably could be construed to show either a need for policing the practice, or that the carriers would have been precluded from policing the practice, if they deemed it to be  
48 necessary for their protection.

Now, for the second reason, that was the necessity of performing the services at the carriers' own convenience. However, in considering this reason, it is necessary also for the Court to consider the duty that was imposed upon the railroads by Section 6, paragraph 8, of the Interstate



Commerce Act, which requires that in time of war carriers must adopt every means within their control to facilitate and expedite the military traffic.

Here, as in every undertaking during the war emergency, personal convenience becomes secondary to winning the war. And, under the circumstances involved in this case, surely the Commission should have assigned some reason why the necessity of performing the service at the railroads' own convenience was superior to their duty to facilitate and expedite the military traffic. But this the Commission failed to do.

And the Commission made no finding that reasonably could be construed to show that the control of Army Base piers 1 and 2 by the Government would have interfered in any substantial way with handling the traffic at the railroads' own convenience.

The third reason assigned or relied upon by the railroads and the Commission as justification for the railroads' refusal to provide these piers and perform the services, was the economy resulting from the con-  
49 sation over a limited number of piers.

The Government submits, your Honors, that that point clearly has no relevancy here, because there was never any suggestion on the part of the Government that the railroads perform these services at piers other than piers at which they had previously performed the service.

In other words, the railroads had performed the service at Army Base piers 1 and 2 prior to the time the Army took over; but when the Army took over, they ceased to perform the services. And clearly it cannot be contended there was any suggestion that the railroads expand their service.

Justice HOLTZOFF. Were the railroads in a position to render this service, if the Government had not stepped in and done the work itself?—considering the increased volume of traffic?

Mr. MOORE. May it please the Court, we are coming to that point; but to answer the question here—

Justice HOLTZOFF. I don't want to interrupt your trend of thought in the argument, if you are coming to that question later.

Mr. MOORE. All right, sir; with your Honor's indulgence. I will hold that answer in abeyance, then.

To repeat, there never was any proposal by the Government that the railroads provide service over the piers not previously utilized by them for this purpose. The facts are.

50 and the Commission found, and I would like to quote just this one finding from the Commission's report:

"The handling of such a large volume of freight as was concentrated at complainants' Army Base facility would have involved no wide dispersion and is to be presumed as conducive of maximum economy."

Justice McGUIRE. Isn't it the contention of the railroads that the Government, in taking over the piers and furnishing its own wharfage and handling, and thereby assuming that control over them, that they should be forced to pay?

Mr. MOORE. That is the contention of the railroads, your Honor.

Justice McGUIRE. That is the basic contention in this case?

Mr. MOORE. Yes, sir, and by reason of the claim that the taking over of these piers in wartime by the Army, and their proving of the facilities and the services, that the piers were converted from public piers to private piers. That is the contention I am trying to break down.

Justice McGUIRE. The Army was furnishing its own wharfage and handling its own freight; and therefore, as a consequence, the railroads were not obliged to pay therefor.

Mr. MOORE. That is the contention of the railroads.

Justice CLARK. But the railroads were still charging the shippers for that service, were they not?

Mr. MOORE. That is correct, your Honor.

Justice CLARK. They refused to perform the work, 51 and refused to reduce the rates.

Mr. MOORE. That is correct, your Honor, and that point will be brought out clearly later on.

The last position relied on by the Commission and the railroads was that it was necessary to eliminate the provision of these services in order to conserve the revenues of the railroads. But, like the third reason just discussed, the Government submits, this standard should have no application in this case, because prior to June 15, 1942, when the Army took over, the railroads had provided the facilities and services with respect to export traffic moving over these piers, and they had also absorbed the charges therefor, collecting only the line-haul rates from the shippers.

The same situation existed at other public piers, not only in the Norfolk port district, but at other North Atlantic ports. Thus, providing the facilities and services at Army Base piers 1 and 2 after June 15, 1942, when the Army

took over, would have resulted merely in a continuation of a practice for the same compensation.

All we were asking was that they continue to perform, and that they charge the same price. The carriers would have been left in precisely the same financial position as they were in with respect to traffic handled over these and other piers prior to June 15, 1942.

Nor can it be contended successfully that to provide facilities and services over Army Base Piers 1 and 52 2 will leave the door open for demands upon the railroads to provide similar facilities and services at purely private piers, because there the standards that were set out by the Commission in the Weyerhaeuser case could be applied to the private situation or the commercial situation; and the commercial or private shipper would be able to meet these standards, that is, they would not be able to show there was no necessity for policing the practice, and for other reasons set out.

Thus, according the facilities and services to the Government's traffic would have offered no threat to the carriers' revenues.

Finally, the record made before the Commission shows that control of Army Base piers by the Government after this date did not convert them from public to private piers. Instead, commercial traffic moved over the piers to the maximum extent compatible with the prompt and expeditious movement of the military traffic.

The Commission made this finding, that—

“The Army allows the piers to be used for commercial bulk freight when that traffic can be handled without interference with the movement of military freight.”

The testimony of record discloses also that approximately 700 carloads of commercial freight moved over these piers between June 15, 1942, when the Army took over, and July 18, 1944, a period of a little over two years.

53 I think that Commissioner Splawn clearly sums up the situation, saying:

“The defense of the port lines resting, as it does, on the attempt to distinguish complainant's piers as private piers, lacks force.”

The arbitrary character of the Commission's conclusion that this control by the Government required them to be treated as private piers is further illustrated by a decision of the Commission in a substantially identical situation. I would like to direct your attention to the case entitled “Elimination of New York, New Haven & Hartford Rail-



road pier stations," found at 255 ICC 305. There the railroad, by tariff amendment, attempted to relieve itself of its stated responsibility for the extent of loading and unloading freight interchanged with water carriers over certain piers at Boston and Providence, Rhode Island, including one pier owned by the Army, and another under lease by the Navy. The reason there given by the railroad for the proposed amendment was that the piers were used to such an extent for military purposes that they no longer could be regarded as public piers open for general commercial traffic.

However, the Commission in that case saw fit to reject the railroad's argument, and there they found that—

54 "Respondent treated these piers for many years as some of its principal port facilities at which commercial shipments were loaded and unloaded, that service being included in the line-haul rates. We are of the opinion that the circumstances upon which it now relies as justification for discontinuance of that service do not warrant the conclusion that the piers in question should at this time be treated as private piers."

Thus the Government submits that the Commission's conclusion that control of Army Base piers 1 and 2 by the Government after June 15, 1942, justified the railroads in treating those piers as private piers is arbitrary and capricious and lacks the rational basis required for its support.

The Commission also concluded, in its report, that it was neither the legal duty of the railroads to provide piers nor to load or unload carload freight. The Government contends that this conclusion is erroneous as a matter of law.

In the early stages of this controversy, before the Government filed its complaint with the Interstate Commerce Commission, the railroads did not suggest or did not contend that they were under no legal obligation to provide these piers or to perform the loading or unloading of the traffic.

In other words, the railroads did not contend that these facilities and services were not included in their common-carrier obligation.

If you will consider that proposition for a moment, if it were valid, then the question whether or not con-

55      trol of Army Base piers 1 and 2 by the Government made them private piers were justified the railroads in treating them as private piers would become moot, because the reason is clearly that if there was no legal obligation to provide the piers or to perform the services, then surely the carriers could not have been required to furnish them. Correspondingly, if there was no legal obligation to provide these facilities and services, neither the Government nor any other shipper could recover compensation in the form of an allowance, where the railroads refused to provide the facilities and services.

This would be true even though it were determined that the piers involved were public, as distinguished from private piers.

But after the Government filed its complaint, the railroads asserted, and the Commission sustained them, that—

“It is neither the legal duty of the railroads to provide piers, nor to load or unload carload freight, except in unusual circumstances.”

This is what the Commission found.

It is evident from an examination of the Commission's report on re-argument that the Commission's order dismissing the Government's complaint was predicated, in part at least, upon its conclusion that there was a complete absence of any legal duty on the part of the railroads to provide these piers and to perform the services.

It has long been established at common law—and

56      I am sure your Honors are familiar with this point of law—that if a carrier accepts goods for transportation to a point beyond the termination of its own line, then the carrier is under the legal duty to deliver the traffic safely to its connecting line. This duty at common law to deliver safely to its connecting line is not restricted to situations where both lines are rail lines, but it extends also to situations where one line is a rail line and the other line is a water carrier or a water line. And the Supreme Court has clearly held that, and I refer your Honors to one case, *Texas & Pacific Railway Company versus Reiss*, found in 183 US 621.

In that case the Supreme Court refused to relieve the rail line of its liability as an insurer for loss by fire of goods which had been unloaded by the railroad at its pier, but which had not been delivered to the water carrier.

Thus it seems elementary that if a carrier accepts goods for transportation to a point beyond its line, and that it thereby assumes the legal obligation or the legal duty to

deliver safely the goods to its connecting carrier, this legal duty also includes the duty to provide adequate facilities and services to accomplish this interchange of traffic.

The Commission itself has recognized the soundness of this proposition—and, on this, I refer your Honors to at least two cases that are set out in the brief: The Galveston Commercial Association case, and the lighterage and storage regulations at New York case.

57 The Commission has acknowledged the railroads' duty to provide adequate services at the ports, for the Commission stated, in its report—and I quote:

"The wharfage and handling at the defendants' public commercial piers are transportation provided by them for the shippers."

In the light of this language by the Commission, it seems clear that if wharfage and handling are "transportation" at public piers, they are transportation included in the common carrier obligation. And, being included in and a necessary part of the common carrier obligation with respect to export traffic, there is no substantial reason why the railroads' legal duty to provide wharfage and handling services at the Army piers should be less or different than their legal duty to provide the line-haul service to those piers, if both are included in the common carrier obligation.

It should be pointed out that the railroads' legal duty to provide wharfage and handling services is not limited to the common law. Instead Section 1, paragraph 4, of the Interstate Commerce Act provides that railroads subject to the Act are under the duty to establish reasonable through routes with common carriers by water, subject to Part 3 of the Act—that is, the interstate common carriers by water.

Section 3, paragraph 4 of the Act provides that railroads subject to the Act shall afford all reasonable, proper and equal facilities for the interchange of traffic between

58 them and their connecting lines, both rail and water.

In other words, the Act imposes the duty upon the railroads to establish through routes with interstate water carriers and to provide facilities for the interchange of traffic between the railroads and these water carriers.

Justice McGUIRE. Do I understand it to be the contention of the Government that previous to 1942, when the Government again took possession of these piers, that the transportation of commercial shipping for export, from rail-



road cars to the ships, was handled by the railroads, and the cost of 4 cents per hundred pounds was absorbed by the railroads?

Mr. MOORE. That is correct, your Honor.

Justice MCGUIRE. And was that 4 cents per hundred pounds charge figured in the tariff as originally charged the shipper from some point, wherever it might be in the interior?

Mr. MOORE. It was, your Honor.

Justice MCGUIRE. And that after 1942, when the Government took back the piers and the wharves, the railroads refused to handle the shipments, that is, from the car to the ship, but charged the Government the tariff rate, of 4 cents?

Mr. MOORE. That is correct, your Honor. That is the contention of the Government.

Justice HOLTZOFF. If the Government had not stepped in, would the railroads have had enough facilities to do the work themselves, bearing in mind the increased amount of traffic during those years?

Mr. MOORE. May it please the Court, the record is not quite clear on that point.

Justice HOLTZOFF. Isn't that a rather important question of fact, because if the railroads had adequate facilities, that is one thing; and if they could not have done the work because of the pressure of traffic, the situation would have been entirely different?

Mr. MOORE. As I was about to say, your Honor, the record is not quite clear as to whether or not under the circumstances the railroads would have been able to provide the services that were necessary. That was not clearly brought out in the record.

Justice MCGUIRE. Then your position, I take it, is if they could not do the work, they should not make the charge?

Mr. MOORE. I wish you would repeat that, your Honor.

Justice MCGUIRE. In other words, your position apparently seems to be, reduced to its lowest common denominator, that if they could not do the work, they should not make the charge?

Mr. MOORE. That is correct, your Honor.

Justice CLARK. In other words, if they couldn't do the work, the charge they put on the shippers would seem to be a rake-off for the railroads?

Mr. MOORE. It seems quite clear that in the case of rail-water routes, such as are here involved, the duty in-

60 eludes the obligation to unload freight so as to place it within reach of ship's tackle. This duty also includes the obligation to provide the piers, when they are reasonably necessary, to effectuate the delivery. So we say that the legal duty of the railroads not only rests upon the common law, but also upon the Interstate Commerce Act, and not, as the Commission asserts, upon a tariff undertaking.

In concluding that providing piers and handling services on traffic interchanged with water carriers is not included in the common carrier obligation, the Commission completely disregarded its own findings regarding the railroads' experience in transporting such traffic, because the Commission found that it had been the general practice for over 50 years for the railroads serving the North Atlantic ports, that is, the ports including Norfolk, to load from pier to car and unload from car to pier the water-borne freight which moved by rail to and from those ports.

One specific example referred to by the Commission in its report is the case of the Pennsylvania Railroad. In 1925 that railroad entered into a contract with the Norfolk Tidewater Terminal Company, which was then the lessee and operator of Army Base piers 1 and 2. Under this contract the operator of the piers was to perform the handling services and provide the piers for and on behalf of the Pennsylvania Railroad.

61 It is significant also to note that the carriers refer specifically in their tariffs to these facilities and services. The fact that such reference is made shows that they are transportation facilities and services without which such traffic never could be moved to its ultimate destination.

When you consider that piers and handling services are indispensable to completion of the through rail-water movement, it is difficult to understand the Commission's conclusion that the providing of piers and the handling services is not included in the obligation of the common carrier where it accepts these goods for transportation beyond the termination points on the line.

There is a further point for the Court to consider in this connection also, and that is that the Commission has consistently criticized the carriers for performing or making allowances for services not included the common carrier obligation. The Commission has condemned these services as being preferential, and has also criticized the carriers

for providing such services, because they result in the dissipation of the carriers' revenue, and because they constitute inefficient, uneconomical operation, not in the public interest.

But the Commission in this case made no suggestion that the railroads discontinue their practice, from which it follows that wharfage and handling services are included in the common carrier obligation.

62 The Government submits that the Commission's conclusion in this respect is clearly erroneous as a matter of law.

Further evidence of the arbitrary and capricious action of the Commission is its conclusion that the provisions in the railroads' tariffs providing that wharfage and handling services at the piers of the Transport Trading and Terminal Corporation would be included in the rates were meaningless after June 15, 1942.

In other words, the Commission found that these provisions in the carriers' tariffs were meaningless after the Army took over, that is, the provisions to provide the piers and perform the services.

I think Mr. Mathews stated that the Transport Trading and Terminal Corporation was the lessee and operator of these piers at the time the Army took over. It is also quite clear from the record that prior to the time the Army took over, several of the railroads' tariffs provided that wharfage and handling at the wharves of the Transport Trading and Terminal Corporation, that is, the same piers, the Army Base piers 1 and 2, would be included in the transportation under the rates to or from the port.

These same provisions were carried in these tariffs for extended periods after June 15, 1942, even though the Army took over these piers on that date and the Transport Trading and Terminal Corporation was no longer the lessee and operator of those piers.

63 The record also discloses that some of the tariff provisions referred to remained unchanged nearly four years after the Army took over the piers. And, to clarify this point, I would like to refer to a specific tariff and the provision contained in that tariff. The tariff of the Virginian Railway provided—and I quote from the tariff:

“At Lincoln Tidewater Terminals, Incorporated, Transport Trading and Terminal Corporation, or Southgate Terminal Corporation (Portsmouth Division Terminals)—



"Wharfage, handling and terminal charges, as published in Norfolk and Portsmouth Belt Line Railroad Tariff No. 6-J, I.C.C. No. 105, will be included in the transportation rates applicable to or from Norfolk, Virginia, on the following traffic moving in connection with the Virginian Railway through the above terminals."

64 In other words, the tariff names specifically the Transport Trading and Terminal Corporation, and it also provided that wharfage, handling and terminal charges would be included in the transportation rates.

It is the Government's contention that the words in the tariffs of the carriers, that is, the words "Transport Trading and Terminal Corporation," adequately designated these piers as piers over which this handling service would be provided. It is the railroads' contention that since the words "Army Base Piers 1 and 2" were not substituted in the tariffs, that the wharfage and handling charges were not included in the rates to Norfolk.

You will recall that in connection with its conclusion that the railroads were under no legal obligation to provide wharfage and handling services, the Commission concluded also that when the railroads obligated themselves to provide such services, the duty is established by tariff undertaking. In other words, when their tariffs provided that wharfage and handling charges would be included in the port rates, the railroads were legally obligated to provide the services or make an allowance therefor.

But in spite of this conclusion, the Commission sustained the railroad's contention that these tariff provisions were inapplicable to traffic moving through Army Base Piers 1 and 2 after the Government assumed control.

65 The Commission concluded that the railroads' obligation under these tariff provisions extended only to going concerns, and when the Transport Trading and Terminal Corporation's lease was cancelled by the Army, this change in management of the piers terminated their obligations under their tariffs.

The fallacy of this conclusion lies in the fact that a corporation may own, lease, or operate wharfage facilities, but certainly it is not a terminal at which or through which traffic can be interchanged. The question is whether the tariffs should be construed in favor of the railroads, as being meaningless and of no force and effect, as is done in the Commission's report, or in favor of the shipper, as

designating by the name "Transport Trading and Terminal Corporation" the Army piers as facilities over which the shipside rates apply and at which the railroads would absorb the wharfage and the handling charges.

For periods ranging up to ten years, commencing in 1925, the railroads provided the use of the piers here involved and performed the handling services, even though the lessee and operator of the piers was not named in the tariffs during those periods.

It is a well established rule of law that tariff provisions are to be construed strictly against the carrier, and any doubt resolved in favor of the shipper.

66 We submit, your Honors, that no such construction has been placed by the Commission on the tariff provisions involved in this case.

In the final analysis, the situation is a simple one and it is simply this, that the Commission sustained the railroads' contention where the Government was the principal shipper, notwithstanding the fact that the railroads themselves have placed a different interpretation on a tariff when the principal shippers were private or commercial shippers.

Earlier in my discussion I considered the Commission's conclusion that the railroads were under no legal or tariff obligation to provide wharfage and handling services.

The Commission further concluded that even if there was a legal obligation, the railroads were relieved of that obligation by reason of the fact that the Government had taken control of these piers on June 15, 1942.

But an examination of these reports I have referred to previously indicates clearly that the Commission treated the war emergency that forced the Government to take over these piers as a legal justification for the railroads' refusal to provide the pier facilities and to perform the handling services.

Justice HOLTZOFF. Do I correctly understand it to be the Government's contention, in effect, that the railroads were getting paid for something they didn't do? They got something for nothing, and you want to be reimbursed, or you want a refund?

Mr. MOORE. That is exactly the Government's position, your Honor.

Justice MCGUIRE. What happened to the lessee, the Transport Trading and Terminal Corporation, after the Government took over?

Mr. MOORE. As Mr. Mathews pointed out, the lessee's complete organization was absorbed by the Army. In other words, the Army took over the entire working personnel and equipment of this terminal operator, and made it its own. In other words, the same personnel and the same facilities that had originally performed this service continued to perform it after the Army took over.

Justice MCGUIRE. Have the railroads paid the lessee corporation anything while they were holding as lessee, for the use of the piers?

Mr. MOORE. They had paid them four cents a hundred pounds for traffic handled by it, your Honor.

Justice MCGUIRE. Do I understand you to say that while the piers were in private operation and operated by the lessee corporation, the railroads took four cents per hundred pounds and paid that amount over to the private corporation for the use of its facilities?

68 Mr. MOORE. And for the performance of the handling services—that is correct, your Honor.

Justice MCGUIRE. And when the Government took over, the four cents was included in the shipping rate?

Mr. MOORE. That is correct.

Justice MCGUIRE. And the railroads then refused to reimburse the Government for its handling expense?

Mr. MOORE. That is correct, your Honor. That is exactly the way it was done.

Justice CLARK. What happened when the Government turned it back? The Army turned those piers back in 1944, didn't they?

Mr. MOORE. I believe at a later date than that, your Honor.

Justice CLARK. Whenever it was.

Mr. MOORE. Whenever it was, it is clear from one of the reports that the Army was turning these piers back, and they were being operated in the same manner as they had been prior to the time the Army took them over.

Justice CLARK. And the railroads are paying for that service?

Mr. MOORE. That is not clear from the record, your Honor, but I assume that is true.

I was just about to come to the point of the Transport Trading and Terminal Corporation.

69 Justice CLARK. Well, you had better come to it pretty quickly. You have only five minutes left.

Mr. MOORE. Only five minutes, your Honor?



Justice CLARK. Yes—and you will have consumed two hours.

Mr. MOORE. Your Honors, the Government's purpose is to point out as clearly as possible the questions involved and the Government's contention in this case. However, we do believe that our brief covers all of the points involved, and has covered them completely and sufficiently. So with your permission, I will discontinue my argument at this time and save that last five minutes for rebuttal, if necessary.

Justice CLARK. Very well. And in order not to interrupt the argument of the other side by the luncheon period, the Court will take the recess now and resume at 1:45.

(Accordingly at 12:15 p.m., the luncheon recess was taken until 1:45 p. m.)

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## AFTERNOON SESSION

(The hearing was resumed at 1:45 o'clock p. m. at the expiration of the recess.)

Justice CLARK. May I say, Mr. Knowlton, before you start your argument that the Court is particularly interested in the subject of jurisdiction of this Court.

Mr. KNOWLTON. Yes, your Honor. I will take that up first.

ARGUMENT ON BEHALF OF THE INTERSTATE COMMERCE  
COMMISSION

By

Daniel W. Knowlton, Esq.

Mr. KNOWLTON. If the Court please, respecting the defense in the Commission's answer that the Court lacks jurisdiction of this suit to set aside the Commission's order denying an award of reparation, the Court decisions in like suits or suits where the amount of award is made fails to satisfy the shipper, particularly emphasize that there are decisions in the Interstate Commerce Act specifically directed to the governing of the recovery of damage for violations of the act and, in effect, that the prescribed procedure may not be avoided through a 3-Judge Court asking the setting aside of the order or action.

I have in mind the Rochester Telephone case mentioned by counsel.

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That was in 307 U. S. 125 and that case says the mere fact that an order is negative does not affect its reviewability but, in that decision, the Court referring

to, and I think quite obviously approving, a prior decision denying an award of reparation. The main basis of the decision was not the doctrine of non-reviewability of negative orders, but the statutory procedure dealing with reparation.

That decision was the *Standard Oil* case, 283, U. S. 26, but, for purpose of brevity, I am using a recent decision also mentioned, the *Ashland Coal & Ice Co. vs. U. S.* which is in 61 Fed. Supp. 708. I am using that because they both explain the statutory provision governing recovery of damages.

In the proceeding involved in the *Ashland* case, the Commission had found that certain rates on coal were unreasonable and ordered a reduction in the future. As to the past, however, it found the rates reasonable and denied an award of reparation. The shipper plaintiffs, before the Court, asked the setting aside of that part of the order denying damage or reparation, urging that the Commission's decision as to the rates for the past was arbitrary and beyond its power and they prayed, much as here, that the Court remand the case to the Commission for further action within the framework of power properly exercised.

Taking up its jurisdiction, the Court first outlined the provisions of the Act dealing with reparation, saying substantially that Section 8 provides that any railroad doing any act or thing made unlawful by the Act shall be liable, in damages, to any persons injured thereby:

• Section 9 provides that any person complaining of being so injured may either file complaint with the Commission or bring action in a Federal District Court to recover damages, but that such person shall not have the right to both of said remedies but must, in each case, elect which one of the two procedures he will adopt.

Under Section 6 the Commission is authorized to award damages on complaints filed with it and that Section also provides, in covering cases where the railroads do not comply with an award, for action on those awards in the Federal or State Courts.

In the *Ashland* case, which I am using here as the background for this discussion, after outlining provisions dealing with the statutory provisions for the recovery of damages, it said, citing cases, that the decision established that where a litigant had elected to complain to the Commission and had been denied an award, an ordinary one-judge

Court could not entertain a suit for reparation on the same claim or cause of action, and this, the Court  
 73 said, brought up the jurisdictional question before it as to whether such complainant having asked for damage from the Commission and having been denied, could sue under the Urgent Deficiencies Act asking a 3-Judge Court to set aside the order or action of the Commission.

The Court said that it thought that the election of remedy provision of Section 9 was an effective bar to such a suit and that the Court, in the Standard Oil case, among others, had effectively dealt with the problem. In the Standard Oil case, a 3-Judge Court suit was involved, similarly, asking for the setting aside of an order of the Commission denying an award of reparation, and there, the Court, in holding lack of jurisdiction, based its decision, in part and only in part, on the doctrine of non-reviewability of negative orders and, on the second ground, it stated that putting the foregoing ground entirely to one side, it still thought that the District Court was without jurisdiction. After quoting from the election of remedy provision in Section 9, the Court said that the appellant, having elected to proceed and having proceeded before the Commission, could not thereafter, on the same claim, proceed by the alternative procedure. That is what the Court said.

Justice HOLTZOFF. Is it your contention that this order of the Interstate Commerce Commission is not subject to judicial review of any kind or is it your opinion  
 74 it may not be reviewed by a 3-judge court and only by a 1-judge court?

Mr. KNOWLTON. It is very well settled that if it has proceeded before the Commission on complaint of damage, it is also well understood when they come to the Commission, for example, complaining of rates for the future or even asking for findings, so long as they don't ask for damages if and after they obtain the findings they can go to a District Court.

Justice HOLTZOFF. Is it your contention that this Court has no jurisdiction or that no court has any jurisdiction? I am not quite clear as to what your contention is.

Mr. KNOWLTON. You mean after—

Justice HOLTZOFF. I am inquiring concerning the order of the Interstate Commerce Commission involved in this case. What is your position as to whether it is subject to any kind of judicial review?



Mr. KNOWLTON. As I have said, under Section 16, the railroads not complying with an award, the shipper is given an action in the District Court or State Court on the award.

Justice HOLTZOFF. I understand, but I am not quite clear from the answer filed by the defendants in this case whether their contention is that the order here involved is not subject to any judicial review whatsoever, or whether they contend that it is subject to review only by 1-judge court. I am not quite clear as to your position on that.

Mr. KNOWLTON. The truth is that once the election is made and an award gotten or refused,—let's say it is refused—under the decisions a 1-judge court cannot entertain a suit on the same cause.

Justice HOLTZOFF. In other words, your contention is there is no judicial review at all?

Mr. KNOWLTON. And in the 3-judge court I am trying to bring out that the same thing is true.

Justice HOLTZOFF. What do you say about the application of the judicial review provisions of Administrative Procedure Act?

Mr. KNOWLTON. I would say as to that this election of remedy provision gives what Congress has given. They can go before a Court but they cannot go before both. If they go before a District Court, they can get a review all the way up. If they elect to go before the Commission, as they can elect, they can get the finding before the Commission and then go to the Court, as Mr. Mathews mentioned in the El Dorado case today. That was on a contract between a shipper and a car company from which it leased cars and then furnished them to the railroads.

Under its contract, it has all of the so-called mileage which is a form of allowance, and that, by virtue of that, he made a large profit and the car company finally refused to pay anything more than the rental he paid. The shipper went into court. It was a single-judge court and the car company defended on the ground of the Elkins Act and said if it paid the amount over to the shipper in excess of the rental he paid, that would constitute a rebate and make him a participant in violation of the Elkins Act. That got to the Supreme Court.

The Supreme Court said there was an Administrative problem involved and told the lower court to hold it in abeyance until the Commission decided it. Then it was taken to the Commission. The Commission did decide it, made no order but made the necessary findings and then

the shipper went to a 3-judge court, instead of going back to a 1-judge court, as in the first instance.

I argued the case and I defended both on the merits and on the ground that there was no jurisdiction of the 3-judge court over findings. I considered there was no order, that they were mere findings.

The election of remedy was not argued and, so far as I could see, there was no question of damages in the sense of an award of damage for some violation by the carriers of the Act. The question was simply what was in that contract and it was between the car company and the shipper, and the Commission determined the rights of both parties.

But what I want to point out is where an administrative question comes up in the court, it is well settled that it can be referred to the Commission so that they have two ways of exercising that election: They can either come to the Commission, say it was in connection with rates in the future or even without that, and get findings as to the reasonableness of that or what-not and then go to the court.

The principal objection I have heard to that is that the statute might run before they get to court. The cases show, and particularly some of the motor carrier cases like the Bell Potato case, that they could first go to a court and advise that court they are asking for damages, but being advised it is an administrative question go to the Commission for it, and that court hold that in abeyance, the Mitchell case, 230 U. S. where the Court, finding an administrative question involved—that was also allowances—sent it back to the lower court with directions to dismiss but stayed the dismissal which is the same thing as holding in abeyance until the decision of the Commission was gotten.

Justice McGUIRE. Is it your position that, under Section 9 of the Act, the individual litigant has an election proposed to him? He can either pursue his remedy in the District Court or he can go before the Commission?

Mr. KNOWLTON. Yes.

Justice McGUIRE. If he goes before the Commission, he is barred from proceeding in the District Court, either before a single judge, or before a 3-judge court, and you predicate that, I assume, on the Ashland Coal & Ice Co. case?

Mr. KNOWLTON. And others; principally on the Standard Oil case.

Justice MCGUIRE. In the Ashland Coal & Ice case, Judge Doherty reviewed the authorities and predicated his opinion on the Standard Oil case. That is your position?

Mr. KNOWLTON. You do understand, your Honor, that it is well understood they come to the Commission for the findings say, as to the unreasonableness in the past and, if they don't ask for damage and should they get those findings then they can go to court or they can go to court first.

Justice MCGUIRE. What did the Government ask for here before the Commission?

79 Mr. KNOWLTON. That is very much the same and perhaps not quite so definite as the Ashland Coal & Ice case. You remember what I said about the prayer in the Ashland Coal case, that the order be set aside as arbitrary and beyond the authority and that the Court remand this case to the Commission for further action within the framework of power properly exercised. That is not very definite. It certainly is less definite, for example, than the remand in the Standard Oil case.

The remand and prayer in the present case was that the Court adjudge that the Commission's order—and here it is a denial order again—was arbitrary, contrary to law and the evidence; that it enter a decree annulling and setting the order aside, and remand the matter to the Commission for further action not inconsistent with the decree.

Certainly, since the remand requires, to be consistent with the decree, it is not less definite; it isn't a matter of asking for reparation or the amount. The Ashland case asked for a remand for exercise of power within the framework of power properly exercised. Does that explain what I mean?

80 Justice MCGUIRE. It does, but I thought you had said, before you went to your explanation, that under Section 9 of the Act the individual prospective litigant had the choice of an alternative either to proceed before the Commission or to proceed in the courts. If he proceeded before the Commission, he was barred from proceeding in the courts either before a single judge or a 3-judge statutory court.

Mr. KNOWLTON. If he comes to the Commission and it amounts to asking for reparation, then if he goes—

Justice MCGUIRE. The Commission denies reparation.

Mr. KNOWLTON. Yes; the shipper, I would say so far as I can see, has nothing then.



Justice McGUIRE. If you stand on the Ashland case, that is your answer, is it not?

Mr. KNOWLTON. Ashland and the Allison case, too.

Justice HOLTZOFF. Has the Administrative Procedure Act, which became a law subsequent to the Ashland case, affected this question at all?

Mr. KNOWLTON. I wouldn't think so because the statute provides the shipper his remedy and it certainly, in my judgment, has been very much stressed not only by the Supreme Court but the other courts, that that is what Congress intended and meant and it does not deny him anything if he proceeds properly.

Justice HOLTZOFF. My question was really directed to that part of the Administrative Procedure Act which provides that every final order of the administrative agency to judicial review. I was wondering what your position is as to whether that has changed the rule of the Ashland case.

Mr. KNOWLTON. That would be partly my answer to it, that he, having statutory election, if he had gotten the Commission finding and then gone to the Court he could have gotten his review all the way up; but, under the decisions as they stand, I am not going to avoid that. Where the Commission makes an award against a carrier, the carrier has his remedy; the 1-judge court, general procedure. I would say that the shipper, if his award is denied and he has come to the Commission and asked for damage, under the decisions I don't know how he could get that review.

My only point is that since it is intended and it is part of the statute and he does have his election, I doubt if the Administrative Procedure Act means to change it.

Do you want me to proceed with the jurisdictional question?

Justice McGUIRE. That is all there is to it, if you stand on the Ashland case.

Mr. KNOWLTON. And the Allison case. The Allison case is much the same.

I want to call this to your attention: That Mr. Mathews this morning said these *per curiam* decisions of the Court in affirming these cases, for example, that it might be taken, in citing the Standard Oil case, as authority for the Ashland or for the Allison cases, that they may be a negative order. In the Ashland case that was after Rochester Telephone case and Judge Dobey—it was a Virginia case—referred to the very footnote in

the Standard Oil case where Justice Frankfurter, speaking of the Standard Oil case, in a prior decision denying reparation, says that the main basis of that decision was not non-reviewable but was the statutory scheme dealing with reparation.

What I want to point out is that, when these cases are affirmed on the authority of the Standard Oil case—and that is true of the Ashland and true of the Allison cases, the Court leaves no doubt as to the ground of its affirmance. There is a negative order as the first basis for the Standard Oil and there is a second ground which is to the effect that while overcharges require ordinary interpretation of the statute, nevertheless when it is remanded to the Commission and it is very complex, but the third ground is the election of remedy provision and that is on pages 240 and 241, I think. In affirming the Court does not leave any doubt but names those particular pages of that decision where the third and separate ground, based  
 83 on the election of remedy provision, is the authority for the affirmance. You find it in both the Ashland case and the Allison case so I don't think there is any doubt that the affirmance, as late as 1945—that was the decision about a year later in 325 U. S., as late as that—the Supreme Court is adhering to that election of remedy.

Coming to the merits, the subject-matter of the Government's complaint to the Commission was that the refusal of the railroads at Norfolk to furnish wharfage and handling service which is the loading and unloading of cars from pier floor on traffic at Army Base Piers 1 and 2 or, in lieu thereof, to pay the Government an allowance for wharfage and for its help in performing the handling service, was an unreasonable practice resulting in rates that were unjustly discriminatory and unreasonable for the future. The Commission was asked to establish new tariffs and require the railroad to pay an allowance to the Government for wharfage and handling. As for the past, injury was alleged and award of damage asked.

First, it is important to mention that it was shown—and I don't think there is any doubt of it in the Commission's report—the railroads are under no basic obligation to supply or furnish wharves which primarily are water carrier or steamship facilities. The decisions of the Commission have criticized the railroads for going so far  
 84 as they have in the matter of wharves.

It is also true for the loading or unloading of car-load freight, that there is no basic obligation there. In

either connection, whatever obligation there is exists by virtue of tariff undertaking and practice and the complaint here is that it has been and now is the railroads' practice at Norfolk and other Atlantic ports to include or absorb and thus relieve shippers of the charges of public wharfage and for handling service, that is, the unloading; whereas, after the Army took over the Base piers and its operation, they refused to pay the Government an allowance, in the same or any amount for the wharfage at the Army Piers and for the handling service. While the railroads at Norfolk have, in connection with the trans-shipment of freight to be trans-shipped by the railroads or their agents, absorbed the charges, the wharfage and handling charges of public wharves, they have confined—there is no question about that up and down the coast—the practice to the public pier operator and have not extended it to private piers operated by the owner of the freight. As counsel says, prior to June of 1942, when the Army took back the piers, the piers had been operated by Transport Trading & Terminal Corporation as a public wharfage and as agent of the railroad. By contract that company agreed to perform this handling or unloading service for the railroads, when-  
85. ever they were obligated to perform, for there were exceptions, and the railroads, in turn, agreed to pay the Transport Trading & Terminal Corporation, the public wharfinger, one cent for 100 pounds wharfage and 3 cents handling service.

Justice CLARK. Which the railroads included in the tariff?

Mr. KNOWLTON. They absorbed that charge.

Justice CLARK. The railroads did not take that money out of their pockets, did they? They added that much on their tariff in figuring the rate, didn't they? That is what tariff means. They stated that they would pay for this service and that was the justification for the extra charge which was figured in the tariff.

Mr. KNOWLTON. To pay the public wharfinger who is not the shipper and who is their agent. It is tantamount and the practice grew up for, as I say, the railroads are under no obligation to furnish them, but where they do the practice grew up, largely perhaps as a matter of competition, because foreign export traffic is very competitive—

Justice HOLTZOFF. The rates fixed in the tariff took that into account, did they not?

Mr. KNOWLTON. Yes. The absorptions in the tariffs are not allowances. Section 1513 provides for the allowances



and the allowances to the owner of the property transported are out of the rates and that provision does not say that the railroads shall pay allowances. It says where allowances are paid, mind you, out of the rate of the shipper they shall be no more than reasonable and the Commission is authorized to fix the maximum. That is to safeguard against rebates. The absorption of the wharfage charge is in a different category, both in fact and in law.

Justice McGUIRE. Did the rate charged the shipper, in this instance the United States, include the 4 cents per hundredweight which the railroad absorbed, too?

Mr. KNOWLTON. No; the railroads on this traffic over those piers, and the results of it I am not questioning, do not have to absorb.

Justice McGUIRE. Before the traffic reached the piers, when it was shipped on board from whatever part of the United States it was shipped, in the tariff charge for such shipment, was this 4 cents per hundredweight included?

Mr. KNOWLTON. The 4 cents was an allowance. The export rate is a different thing. What is called an export rate is a rate of the railroad, say, from Pittsburgh to Norfolk on traffic which is to move, say, to France. Commonly, that is lower than what is called a domestic rate where from the same origin, the traffic would end at that port. It wouldn't be going beyond and an export rate, therefore, generally reflects the distance and all factors that generally enter into the making of a reasonable rate.

Justice McGUIRE. But did it include or did it reflect this 4 cents per hundredweight? Do you follow me?

Mr. KNOWLTON. Yes; I understand what you mean. That is, does it get back to the shipper?

Justice HOLTZOFF. Would the rate have been 4 cents less if wharfage service were not taken into account?

Mr. KNOWLTON. I said the railroads absorbed—included and absorbed this wharfage charge and handling charge thus relieving the shipper. I don't question that. That is what happened at all public wharf piers.

Justice McGUIRE. I don't understand what you mean by the term "absorption."

Mr. KNOWLTON. Absorbing, well, it means that the service is covered or included in the line haul rate.

Justice CLARK. That is precisely the basis of the tariff; what they are going to do for this money. They call it

absorbing. The railroads don't put up that 4 cents a hundredweight, do they? As a matter of fact they charge a higher tariff because, as they call it, they are absorbing that 4 cents a hundred and when they refuse to perform the service, which they did in this case and don't reduce the tariffs, they are taking 4 cents a hundred out of the pocket of every shipper, aren't they?

88 Mr. KNOWLTON. I am not questioning that that is the result of what happens. It is the traffic of the owner at private piers. Where it is the traffic of the shipper, he doesn't get the allowances. It is only at the public piers, municipal and sometimes railroad piers, that it applies.

Justice MCGUIRE. On the public pier, presumably the railroad is charging 4 cents, though, which it pays nobody and puts in its own pocket, and charges the shipper.

Mr. KNOWLTON. I think maybe, if you will let me continue, I will cover these questions. If there is anything specific you had in mind that you wanted—

Justice MCGUIRE. I feel it is very important to know whether or not this 4 cents is charged in the tariff rate, as Mr. Justice Clark has asked, and then when those services were rendered, whether or not by the use of the term "absorption" you mean, as I inferred you meant, that the railroads get 4 cents for doing nothing.

Mr. KNOWLTON. The railroad does not do anything. If it was on a railroad pier, it would not charge the line-haul rate. The line haul rate would include so-called wharfage which is a form of rental for wharves and for the unloading. The shipper would not be charged that at all.

89 This arrangement of public wharfage amounts to the same thing. The practice started on railroad piers and, in principle, is still continued as public piers operated by public wharfingers because they are agents, made also by contract and by the service they perform.

After the railroads took over, took back the operation of these Base piers, the traffic, as General Fitzpatrick testified, was for military purposes and almost exclusively export. As a result of the Army taking over the bases and terminals and piers there, the traffic, when placed on storage or other tracks which the Army designated, its own property, its own traffic passed from the custody of the railroad, to the possession of the Army or Government owner of the traffic.

Under these circumstances, under the terms and under decisions, the traffic lost its character. It was no longer export in the usual sense and, except for a special provision in the tariffs, the Government would not have been entitled to the low export basis of rates which I just explained are lower than domestic rates. They would have paid the domestic rate and there would have been no allowance in the domestic rate. However, at the request of the Navy and Army, the railroads had previously put in this tariff a provision especially providing that that low export basis of rates on foreign traffic moving to foreign countries would also apply—this means generally—on traffic moving to foreign countries through Navy Yard, Navy bases and

90 Army bases so that, after the piers were taken back and operated by the Army, this provision was applied in according the low basis of export rates to the Army on the traffic of the Government but the railroads were not willing to also grant the concessions demanded of the 4 cents on wharfage and handling.

Justice McGUIRE. May I ask you this question, please? As I understand it, previous to the 15th day of June, 1942, the wharfing facilities had been leased to a private corporation and shippers from any part of the country to Norfolk for export trade were charged, in the tariff rates fixed by the railroads, 4 cents per hundredweight for the handling of their goods when they arrived at those piers. The railroads then took that 4 cents per hundredweight and paid it over to the Transport Trading & Terminal Corporation, a lessee of the Government.

Mr. KNOWLTON. That is right.

Justice McGUIRE. However, after the 15th day of June, 1942, when the Government took back its property for the purpose of prosecuting the war, the railroads refused to handle Government shipments, but still, in the tariff rates fixed for the shipment of Government property, charged 4 cents per hundredweight.

Mr. KNOWLTON. Refused to handle?

Justice McGUIRE. They didn't handle the shipments.

91 Mr. KNOWLTON. They didn't have much opportunity to handle.

Justice McGUIRE. In any event, they did not handle.

Mr. KNOWLTON. It is contended they did refuse, in a sense, but I will go on and tell you why it was impractical.

Justice HOLTZOFF. They did charge 4 cents for services they did not render. Isn't that so?



Mr. KNOWLTON. They didn't pay the Army. There was a difference between the shipper on a public pier and the Government.

Justice MCGUIRE. They took the 4 cents which they formerly paid the Transport & Terminal Company for the work they did and put it in their own pockets.

Mr. KNOWLTON. I explained they made one concession by giving the low export rate and they were not willing to make the further concession. I want to go into that a little.

Justice MCGUIRE. I would like to go into that all the way; not just a little.

Mr. KNOWLTON. Yes; all the way. Shortly after the Army took back the operation of the Base piers, it wrote the railroads to amend their tariffs to provide for allowances to the Government in wharfage and handling in the amount of 3 cents for handling and 1 cent for wharfage.

It wasn't until a year later that this demand or  
92 request was changed to ask the railroads to perform the handling services and the change was explained in a letter by the statement that it appeared it was a prerequisite to an action before the Commission.

When, in the very first case, the army took over the piers, the notice to the railroads was that they would be operated by the Army and, with rare exceptions, or with, I think, the exception that there might be some commercial freight required it was for Government traffic only and, in either instance, the letter said the operations will be by the Army.

The testimony of record shows that, just as I said in the first place, under war conditions and because of changes in orders from overseas, a constant requirement of priorities and so forth, these operations had to be and were under the absolute control and direction of the Army. In this respect, General Fitzpatrick does not qualify his testimony in the least, nor does he qualify his statements and testimony that the amount of civilian labor was inadequate and that troops and prisoners of war were sent there to do this work while about half was civilian labor, as the Commission said in its report, obviously anything but operation by the Army was impractical. In the Commission's report and the evidence, it is well settled that an allowance cannot

be demanded; it is settled by the Supreme Court,  
93 unless they do the service, unless they have the opportunity of doing the service and it was shown that what was asked of the railroads was to subordinate its common carrier status to the requirements and needs of the Army.

This is technical and legal but is nevertheless so that while common carrier service within the Act may be a variety of things, it does not include service to a shipper where so subordinated to the needs and directions of the shipper that it becomes the work of the shipper. The Commission relies on the so-called terminal allowance or plant spotting cases repeatedly, I think in seven or eight decisions, upheld by the Court. Spotting is the service of placement of loaded cars at desired unloading points within the plants or on the tracks of the large industries. By custom, in this country, the rates of a railroad to a city or a town include delivery of loaded cars to team tracks; also on the ordinary so-called factory spur siding, but, as for the large plants where there are plant tracks and sometimes a plant railway, usually delivery is made on what are called interchange tracks at the plant. As a ground for contending that they are entitled because the factory usually gets the spotting right at the freight door, there is nothing to interfere, these large plants urged a large amount of traffic as meaning that the service

94. is no more than what would be done, say, on an ordinary spur or team track; but, in a busy plant, there are many interruptions, many delays, and what is pointed to particularly by the Commission and by the Court is that the service has to be and is in almost all cases, under the direction of that plant, has to be under its control and has to be coordinated. That is what is wanted, to begin with; feed the traffic, the coal and oil, as and when wanted in the operation of the plant, so that the result is that it is called plant or private service, and that is what it is.

In a decision by Justice Cardozo in the General Electric case which came up long ago in the Court of Appeals in New York, considering the conditions at their plant, he said plant spotting—the placement of cars—is not common carrier. It is the plant's own work.

Chief Justice Stone, in a quite recent case, *U. S. vs. Wabash Railroad*—I have forgotten the volume—said that the controlling question was whether this plant spotting, as found by the Commission, was not common carrier but plant, and said the evidence supported that it was. Both decisions stress the necessity for coordination and direction and the subordinating of the carrier so that it becomes nothing more than an electric train performing like service in a plant.

Justice CLARK. Mr. Knowlton, you have consumed  
95 the hour that you requested.

Mr. KNOWLTON. May I read this?

Justice CLARK. Of course. It is taking some of your time.  
If you can conclude very briefly, I wish you would do so.

Mr. KNOWLTON. I will in about two minutes, your  
Honor.

Justice CLARK. All right.

Mr. KNOWLTON. (Reading) "Providing a wharf  
and handling freight at the complainant's piers are  
not transportation but merely facilities provided and  
work done by a shipper for himself on his own proper-  
ty, at his own convenience and expense before or after  
the transportation is performed. The defendants may  
not be required, therefore, to provide a wharf or handle  
the freight on the complainant's piers and, not being  
required to do so, they are not compelled to pay an  
allowance in lieu thereof."

It cites the Commission's spotting cases, the propriety  
of operating; 209 I. C. C. 11.

I want to call one more thing to your Honors' attention:  
That those cases, the first one went up in the American  
Sheet & Tin Plate, five cases from Pittsburgh in plants  
around there and the Commission's order to  
96 resist paying allowances were sustained. Other cases  
came up involving different plants and they were  
sustained.

The point I want to make is that there were tariffs in  
the carriers' rates similar to what are called allowance  
tariffs. Justice Roberts in the decision meets the very  
argument that since the provision of the tariffs require the  
allowances to be paid, why it was a requirement of the tariff.  
Justice . . . dissented on that but the point is it was  
not common carrier service and not susceptible to coverage  
by a tariff.

Justice CLARK. Mr. Cousins.

#### ARGUMENT OF BEHALF OF THE RAILROAD INTERVENORS BY WINDSOR F. COUSINS.

Mr. COUSINS. May it please the Court, I speak for the  
railroad intervenors, the several railroads who serve Nor-  
folk and some of those against whom the Government's  
complaint was originally brought.

I want to speak on the jurisdictional question rather  
briefly and I want to talk about the merits. I think I had  
better talk about the merits first, because we have just left



off on that point, but I cannot avoid saying, right at the outset, that this Court is occupying a unique position today.

97 — So far as I have been able to find, no judge ever sat before in a case of United States versus United States. I want to show very clearly, a little later on, that this case is just that; only that; that it cannot be anything else but United States versus United States with the same attorney general for the plaintiff who represents the defendant.

Having put that thought in the mind of the Court and relieved myself of the commitment I have been under, because it has not been mentioned before very clearly, I want to say a word immediately about the merits of the case. This was no racket. There has been no unjust enrichment. The Government has not paid for any service that it did not get. The railroads did not charge any extra rate for some work they did not do. There is nothing to that thought at all. Whatever you call it, there isn't anything to it.

I anticipate a little difficulty in explaining to a court how a freight rate is made and making the Court understand just why and how a certain factor and increment or addition is not there or is there. I am going to try to do that but I want to protect myself a little bit before I do that, just in case I am not successful. I want to do that by saying,—and not challenging the Court at all,—but I want to point out that the Commission so found. It made a finding, the very one that I have stated to you and that in the end, the only burden that I have here to-day is to show the Court that there is some evidence of record to substantiate that finding.

98 I don't think I have to convince the Court that the Commission was right, but only that it had evidence upon which to act. I think I can convince the Court, but at least I have a way to beat a retreat if I don't. It has been said for 50 years that the railroads have done certain things along the Atlantic Coast at the ports, and I will start on that tack by saying that, for 50 years, the railroads have never done what the Government asks in this case. For 50 years, the railroads have never at Atlantic ports gone on a pier, operated by the owner of the freight, and loaded and unloaded his freight from cars for him. That has never been done.

The Government did not really ask that it should be done. What the Government asked was for an allowance, a payment for doing it itself in lieu of having the railroads perform. As to that, that is another point. Never in 50 years

have the railroads paid an allowance to a shipper for this kind of service on a private pier or any other kind of pier. That is broader. We have not unloaded on private piers, but we have not paid allowances on any kind of piers.

This service did start a long time ago; started on railroad piers because the railroad had some freight to  
 99 deliver to a steamship, really a sailing vessel when it started, and there it was on the railroad's pier. The shipper wasn't there. He was back inland some place. He wasn't there to unload his freight. Anyhow, the railroad didn't want him on its pier. It wanted to run its own pier and have control of it and not have people coming on there interfering with the freight, so, for that reason and possibly for reasons of competition to get business and other things, the railroads began this practice of unloading export freight from cars.

That is a very unusual practice. Ordinarily, freight is unloaded by the shipper in this country. That is his obligation and, if the Court will permit me to file a brief at a later date in this case, I would like to furnish citations for that statement and for many other things that I will say so that I won't have to cite cases for every point today.

Justice CLARK. How much time do you want to file a brief?

Mr. COUSINS. Would two weeks be an unreasonable request?

Justice CLARK. Does the Interstate Commerce Commission desire to file a brief?

Mr. KNOWLTON. We would like two weeks.

Mr. MATHEWS. If the Court please, we have handed  
 100 in our brief. However, if the Court has in mind to terminate the argument shortly, I would like to have the privilege of filing a reply brief within two weeks, or some such matter.

Justice CLARK. Very well.

Mr. COUSINS. This practice of unloading export freight on the piers has gone on through the years but it has been restricted and limited. It has been held down to railroad piers or other public piers, that is, piers operated by wharfingers.

One of the judges referred to the operation of this pier as by a private corporation. Yes, of course, the Terminal Transport Trading Company was a private corporation, but it was in the nature of a public utility, a public wharfinger, not merely a private corporation.

Justice HOLTZOFF. Did the railroads in Norfolk have enough facilities to have handled all this heavy traffic as it increased during the war years, if the War Department had not stepped in?

Mr. COUSINS. They had the facilities the War Department took from them, certainly. The answer is obvious.

Justice HOLTZOFF. Did they have the labor?

Mr. COUSINS. No one can answer that question, your Honor, because we don't know. What we say as to that is this:

101 The railroads never could have operated that facility in the way the Army operated it. We could not have operated it under Army methods with boats coming in and taking half a load and going back into the channel; with freight being taken out of cars and somebody changing his mind and it being put back in cars and sent back to the warehouses and back into storage yards. We cannot operate business that way. That was Army war time operation with decisions being changed every 24 hours; some days on an eight-hour shift; some days on a 24-hour shift. We don't say we can comply with that kind of business but we would have operated the pier if the Government had not taken it over.

The Army piers at other ports were not taken over. We operated for the Army at Baltimore and Philadelphia and at other ports in the usual manner. The Army would have had the freight unloaded free. It would have had its wharves supplied by the railroads if it had just sat tight and let the situation continue, but that did not suit the Army.

Justice HOLTZOFF. You were relieved of the cost of doing that work, were you not?

Mr. COUSINS. Yes; certainly. The Army took our facilities and said, "You pay us".

Justice CLARK. I want to know where that 4 cents went.

102 Mr. COUSINS. I got off the track. I haven't shown you there was no four cents. I have forgotten my main point here.

I wanted to read you what the Commission said about the finding which I am now trying to support.

"The line haul rates in question are less than reasonable maxima and nothing has been added to them to cover the cost of wharfage and handling."

Nothing has been added to cover those features.

"In other words, the carriers never have particularly considered wharfage and handling costs in making the rates."



We will show that in many ways.

Justice McGUIRE. Let me ask you this question right there: If the 4 cents was not included in the rate, then do I take it the carrier paid the private corporation 4 cents for handling the freight as a gratuity?

Mr. COUSINS. Not as a gratuity but paid it out of its own pocket.

Justice McGUIRE. Let's put it this way: The shipping was, let's say, a dollar. Do I understand when the goods arrived at the pier that the carrier had the goods unloaded by the corporation for the benefit of the shipper and paid the corporation 4 cents for doing it?

103 Mr. COUSINS. Yes, sir. Of course, the 4 cents that the railroads paid their agent had to come out of the revenue. There wasn't any other place for it to come from and, technically, it was included in the rate, but, actually the 4 cents had never been added into the rate in the first place. All of this export freight that has been moving over the private piers for years pays the same export rate and did not get the free unloading.

Justice McGUIRE. What do you mean by "technically included in the rate"? Let's take my example of a dollar.

Mr. COUSINS. Your Honor, this 4 cent payment, the free unloading service, comes as close to a free service uncompensated for as anything you can get but, under the law, the railroads cannot give away their services. They cannot unload for nothing, so there is a fiction there that the freight rate covers the cost. It includes the cost. Out of the freight rate, the railroad absorbs the cost; but what I am saying to you is this—

Justice McGUIRE. The freight rate is paid by the shipper so the shipper is absorbing the cost.

Mr. COUSINS. It is in the rate, technically, but no extra amount was ever put there.

Justice HOLTZOFF. Wouldn't the rate have been 4 cents less?

Mr. COUSINS. Not at all.

104 Justice HOLTZOFF. If the railroad assumed it wasn't going to furnish the service?

Mr. COUSINS. No. Your Honor, this service has only been rendered at the public piers that I tell you about, for years. All of the other export freight, and there are private piers all up and down the coast, all of them pay the same export rates. They don't get this free service and yet they pay the same rates. Various types of ship-

ments, all freight on open cars, all freight in tank cars, bulk freight and certain other exceptions do not get the free loading in any circumstance and yet it pays the same rates. Those are the technical ways in which we prove that the rate does not contain any increment or additional factor to cover this special service. On the contrary, the Government got a concession.

If a private shipper had taken over this pier, as the Government did, and operated it for its own account, it would not have received the export rate. It would have paid the higher domestic rates and the record shows how much higher they are.

Justice McGUIRE. Mr. Cousins, let's be practical. What you are saying, in effect, is this: Since the rate reflected no increment to cover the cost of the service rendered, as far as the situation was concerned when the private corporation operated the wharves, the railroads were paying 4 cents per hundredweight for the unloading of the shipper's goods.

Mr. COUSINS. For the unloading and wharfage, yes, sir.

Justice McGUIRE. And whatever else was done?

Mr. COUSINS. Yes, sir.

Justice McGUIRE. And they were paying that out of their own pocket?

Mr. COUSINS. Yes.

Justice McGUIRE. Because there was nothing in the rate charged the shipper for that loading service?

Mr. COUSINS. The corporation gave a special service and they paid them just the same as they paid me. I am an employee. He was an agent.

Justice McGUIRE. You paid him 4 cents without any reimbursement at all from the shipper?

Mr. COUSINS. Yes, that is correct, and the Commission so found; and you cannot get away from it when you consider the same export rates have always applied no matter whether the shipper got this service or not.

Let's look at this in a little different way. May I say, in passing, that there is nothing new or novel about this. It has been passed upon in a long line of Commission cases. The Government did not think this theory up. Again and again private pier operators have brought cases before the

Commission saying they wanted to get in on this, that somebody else was getting paid, that is, our agents, but they weren't. They wanted to be our agents; too,

just exactly the way the Government wants to be our agent and the Commission has passed upon this situation time and time again in seven or eight different cases, most of them which I happened to handle myself. They are cited in these reports and I will be glad to deal with them at more length.

Justice McGUIRE. I take it the carriers compromised this case with the Government which has a different view than yours.

Mr. COSENS. It had a different tax situation from mine.

If your Honor please, let me approach this from just a little different standpoint. I am not concerned for the moment whether the shipper paid the 4 cents or not. Let's assume that he did, if you wish, and I want to make this point: The railroad's obligation at most was to unload. A railroad has no obligation to pay an allowance unless it prefers not to render the service.

That is old law. It was established in Atcison Railway versus U. S., 232 U. S. 199.

Therefore, in this proceeding, if the railroad had any duty for this mysterious 4 cents, it was to perform service; not to pay a rebate to the Government. We have no such obligation. We had the right to do the work, but in 107 this case, we had no such opportunity.

The Government never intended that the railroads should do the work. They didn't want the railroads to do the work and they did not have a situation in which it would have been possible for the railroads to do the work. In Exhibit 1, evidence of the Government itself and everything I say on this point is taken from Government witnesses, they describe this operation; not railroad witnesses. Every bit of the evidence on this point is from Government witnesses. Exhibit 1 shows that, for a year when the Army was negotiating with the railroads about this situation, all they asked for were allowances; never once to have any work done. The correspondence shows that the Army intended to do the work itself; that it said it would do it. That is why it took over the piers. Otherwise, it did not have to take them over.

Then, when we had gone along about a year without getting any place, we got the first request to perform some work and the letter said, an exhibit of record.

"This is necessary that we make this request as a prerequisite to filing a complaint before the Commission."



Then there was another formal request without any qualification but from that time on to the hearing and all through the operation it was clear that the railroads could not have done the work under the Army methods and this is significant: When the complaint was filed to the Commission in April, 1944, almost two years after the Army had been in possession of the pier, it did not ask the Commission to require the railroads to perform any service. It asked solely for money back, for an allowance or a reduction in rates. They never did want service.

Mr. Knowlton has mentioned briefly, the fact under the railroads' right to perform, that they could not have done so under Army methods and I have touched on that very briefly. I don't want to go into that any further. It is in the record. We will furnish the references to the testimony, and all I ask you to do is to find that they do support, whether you will agree with them or not, but there is enough there to justify the Commission in making up its mind and in coming to that finding which it has made.

In order to conserve our time, although I had intended to talk about the merits on some of the other issues, this is not merely a case attacking the reasonableness of the rate, but there is a question of tariff interpretation and things like that. I would like to pass over that and supply in my brief and again show specific rulings of the United States

Supreme Court that, under those various sections the Commission has the final say if there is any support for its evidence, that they are matters for administrative determination. I emphasize the point because I think we have talked so much today as if we were arguing this before the Court *de novo*; as if it were up to us to convince the Court one way or another and all we have to convince the Court of is the fact the Commission had some justification for coming to its views.

The Supreme Court has said that the reviewing court will not consider the expediency or wisdom of the order or whether, on like testimony, it would have made a similar ruling. That is what I am trying to say. That is *Interstate Commerce vs. Union Pacific*, 222 U. S. 541. Now, I will pass from the merits and talk a very few moments about the jurisdiction of this Court to review.

I have two points on that. Mr. Knowlton dealt only with one. He doesn't go along with me attacking the standing of the Department of Justice here, as such, although he does go along on the theory that the order is not reviewable.

because of Section 9 of the Interstate Commerce Act. There isn't any doubt in the world but that, under the law today, this order is not reviewable by this Court. You will have to overrule the Supreme Court if you come to a different conclusion. In support of that, I cite the Standard Oil case, 283 U. S. 235 which, by name, was not  
 110 overruled in the Rochester Telephone case, 307 U. S. 125, which did throw out the negative order theory but maintained the validity of the Standard Oil case and then the Ashland Coal & Ice Co. case.

In the statutory Court which has been mentioned, and which was affirmed by the United States Supreme Court in 325 U. S. 840, ~~not~~ on any vague or unknown ground as Mr. Mathews suggested this morning; but on the very specific ground as urged in the motion filed by the Department of Justice and signed by the Assistant Attorney General, Mr. Sonnett, who executed the petition in our case and who also executed the defendant's answer in our case, the case was affirmed by the Supreme Court citing the Standard Oil case.

I don't see how we can get away from the fact that is still good law. Let me mention another thing. It is sometimes difficult to decide which side the Department of Justice is on, as it is here. There is another proceeding of review going on at the moment of a case just exactly like this; a review of an Interstate Commerce Commission order. It is pending in the District Court for the Eastern District of Michigan. It is Civil Action No. 6295. It has not yet come to trial and, therefore, it is behind our case but briefs have been filed and in that respect it is ahead of our case. I

have in mind the brief filed in behalf of the United  
 111 States. It is not dated but it has been submitted to the Court and is of current date because, as I say, there has been no trial of the case. Here is the first heading in the Government's brief under its argument:

"Plaintiff having elected to seek reparation from the Commission, this Court, by virtue of Section 9 of the Interstate Commerce Act, cannot entertain a suit to enjoin the Commission's order denying reparation."

It cites all of the cases that I have just mentioned plus a half dozen more that I won't bother with.

Justice HOLZOFF. Are Government counsel the same?

Mr. COUSINS. Government counsel in the Michigan case are not Mr. Mathews and Mr. Moore, but they are their associates, Mr. Dumbould who sits in back of them, and their

superior, Mr. John F. Sonnett, who executed, as I say, both the petition and the answer in our case.

Mr. DUMBOULD. May it please the Court, as a member of the bar of this Court and as amicus, may I state in reply to what has just been said about my name that this brief that he has in his hand is a joint brief filed on behalf of the United States and the Commission and it was written by Mr. Edward M. Ready of the Commission's staff and it covers the defenses raised in his answer which involved the same defense that my friend raises here, and it also covers the defenses raised in the answer of the United States  
112 which does not raise the point that he raises here.

Justice CLARK. I don't think we need to hear any argument in the Michigan case. It is immaterial, in the first place, and I think the interruption was more immaterial.

Mr. COUSINS. Of course, we are in both cases and we would like to know what the Department's views are on some of these questions. I won't say a word about the El Dorado case which Mr. Mathews mentioned at length this morning because we don't contest that principle. That goes to the negative doctrine theory which has been decided by the Rochester Telephone case, as Mr. Justice Brandeis said in the El Dorado case. I take no exception to that at all because I don't think it affects our point.

I make just one more comment on this subject. I listened very closely to Mr. Mathews deal with this particular point this morning and I thought I saw a basis in his argument for making a distinction between a tariff interpretation issue; a case to the Commission alleging that under the tariffs themselves, a complainant was entitled to reparation and other issues such as the tariffs were unreasonable and discriminatory and so forth, and he may have put himself in a position to contend that that is the Michigan case, that that is a tariff interpretation proceeding, not as  
113 broad as ours. Well, ~~if~~ he does, I will accept that provided this Court ~~will~~ accept that same doctrine in this case to the extent that the tariff interpretation issue arises. It was argued at some length this morning that we have a tariff interpretation issue here and, if the Government agrees that the Standard Oil case is still good for that type of issue, why then the review in this proceeding is precluded in part, at least.

If the Court please, I want to talk about litigation between the United States on the one hand and the United States on the other hand. There is only one way to review



an order of this type of the Interstate Commerce Commission, and it comes up under Section 208 of the Judicial Code found in 28 U. S. C. A. 46:

"Suits to enjoin, set aside, annul or suspend any order of the Interstate Commerce Commission shall be brought in the District Court against the United States."

There is no basis upon which a suit can be brought against anybody else. It would be improperly brought. You cannot sue the railroads and you cannot sue the Commission.

Now, to put a better face upon the matter, the Government filed its petition here, "United States vs. Interstate Commerce Commission and United States," and my friend, Mr. Knowlton, did not ask to be dismissed.

114 I assume that he concluded he was coming in anyhow as an intervenor and he might as well ride along in with the Government instead of getting it the hard way.

Justice HOLTZOFF. Isn't this just a form for the purpose of securing a review of a decision of the Interstate Commerce Commission, rather than being a case of the Government suing itself? In other words, the Government as a shipper does the same as a private corporation as a shipper, and it seeks a review of an order of the Interstate Commerce Commission.

Mr. COUSINS. The question then arising, whom is the Government suing if not itself? It has no right to name anyone else as a defendant.

Justice HOLTZOFF. It has named the Interstate Commerce Commission as a defendant.

Mr. COUSINS. It has no right to do so. The Commission could have been dismissed without any doubt. The same judicial code, sections 212 and 213, provide the only manner in which the Interstate Commerce Commission gets into a case of this kind and that is by intervention which it may do, but it is up to it to decide, not up to the Government. The same section of the Code and this is 28 U. S. C. A. 45(a) says:

115 "The Attorney General shall have charge and control of the interests of the Government in the cases specified,"

and so forth. He is in charge of the defense. Where would this Court have been today if the Interstate Commerce Commission had been dismissed, assuming it has the right to do, and the railroads had not intervened? Would you have had a case or controversy before you? Of course,

they have a large number of lawyers. They could divide up and some get on one side and some get on the other.

The United States, if your Honors please, is not merely a formal defendant. This is not merely a formality. It did not get into the law inadvertently. It was debated at great length when it got into the Act in 1910 in the Elkins Act. It has been a controversial point. It has been debated in the present Congress as to whether the United States or the Interstate Commerce Commission should be a defendant in a case of this type. The debate has been on who should defend an order of the Commission, that is, who is the Commission? And the answer is; "It is the Government." The interests of the Government are in charge of the Attorney General. He is to defend. That does not allow very much leeway for his function to attack. The views were, when the legislation was passed, that he was to defend. That was questioned. The Attorney General was not trusted entirely by some of the Congressmen, just

116 as he is not trusted entirely by some in the bills in the Legislature now pending where there is another effort to change it, and, for some reason or another, the Department of Justice has always resisted any change and is to this very day and the present Attorney General is also resisting it; but the subject back in 1910 in the Elkins Act was debated at great length.

This debate covers dozens of pages that I am sure it will be of great interest to the Court but I am going to read, of course, just a very little bit. I am reading generally from Volume 45 of the Congressional Record, page 6461 and in that vicinity where they were talking about the interest of the Government on the one hand or the interest of the Commission on the other, and who should be the same defendant, and Senator Hayburn of Utah said:

"It would certainly be intolerable to have one branch of the Government attacking another branch in the Courts."

Justice McGUIRE. Why did the railroads intervene? Why not let the Government fight it out with the Government?

Mr. Cousins. I think maybe we should have, but I was fearful my friends would not bring the point to your attention.

Justice HOLTZOFF. By intervening, though, you have destroyed the moot character of the case, if it ever had  
117 a moot character.

Mr. Cousins. No, I cannot go along with that, if your Honor please. There was either jurisdiction under

the statute when the case was brought, or there wasn't. Our intervention does not add anything to what the law permitted.

Justice HOLTZOFF. I thought your point was not that there was lack of jurisdiction, but this is a moot case by the Government suing the Government, so that by coming in as an adverse party, haven't you destroyed the alleged moot character of the case?

Mr. COUSINS. I made both points that you have mentioned. One is an interpretation of the statute. I say that you cannot bring an action of this kind except under the statute and the statute does not permit an interpretation which results in *United States vs. United States*.

That is, that it doesn't contemplate the Government reviewing this type of order. That is under the statute.

Then, in addition to that, I say there is no case or controversy under the Constitution and under either of those theories, which are separate, distinct, under either of them I don't think anything has been cured if you don't have a case or controversy at the outset, by having some intervenor come in, such as we are. No order can be made against us here.

118 This language from the Senate is very interesting.

In one of the colloquys that occurred, Senator Hayburn criticized a part of the bill which, at that time, proposed that suits should be brought by or against the United States, and Senator Cummins replied:

"Mr. President, I cannot conceive of any such suit as that just mentioned by the Senator from Utah."

Justice HOLTZOFF. Are you going to put those quotations in the brief?

Mr. COUSINS. Yes. I will read just one more, if you will permit me.

Justice CLARK. I was going to suggest, Mr. Cousins, if you are going to write a brief you can put those excerpts from the debate in there.

Mr. COUSINS. All right. I think the Court will find them interesting.

Prior to that Act of 1910, it had been customary to sue the Interstate Commerce Commission as a corporate entity, but the Supreme Court has made it very clear that that situation no longer exists.

There have been cases, if your Honor please, which hold that you cannot have suits where the Government is on both sides. There never has been one of them that has been



119 filed like this case, so far as I know, but there have been some that have been so in principle and I will just refer to two. The *Globe & Rutgers Fire Insurance* case, in 273 Fed. 774, a case in the Second Circuit where *certiorari* was denied, grow out of a marine accident and, although there was an insurance company as plaintiff and the Director General as defendant, both of them represented the railroad. The railroads had been taken over by the Director General and although the parties happened to be different in form, the Court said:

"It is elementary that the same person cannot be both plaintiff and defendant at the same time in the same action."

It explained how the Director General ran up against that difficulty in that case. More recently, in *Defense Supplies Corporation vs. U. S.*, 148 Fed. (2d) 311, again the Second Circuit and again *certiorari* denied, the Court said.

"It seems clear to us that the complete ownership of the Defense Supplies Corporation by the United States shows this to be nothing more than an action by the United States against the United States."

It declined to accept any such lawsuit as that.

I will deal in my brief with the point whether our intervention changes the situation in any respect. We have several cases that I think will persuade the Court.

120 I just want to say when the Court considers these points that I have made, it may come to the conclusion or it may at least be bothered by the thought that, if it is true that the United States cannot seek a review, that it is treated differently from other shippers, but that is not a strange situation. That will be true if you accept the view I have outlined today, but there is nothing strange about that because the United States is treated differently in the Act right now. Section 22 of the Interstate Commerce Act permits the railroads to grant the United States free transportation or transportation at reduced rates, but it cannot do that for anybody else. Section 3, paragraph 2, permits the railroads to give the United States credit whereas it is only on a cash basis with other shippers. That shows that where Congress intended the United States should receive special treatment, it knew how to handle it and, if it had intended in the Judicial Code that the United States should have the right to review an action of this kind and thus could be plaintiff against itself, I think it would have indicated so by clear language.

Thank you.

Mr. MATHEWS. I have just two points. I understand I have five minutes.

Justice CLARK. If you are going to write a brief, you might put them in the brief.

Mr. MATHEWS. I will be very glad to do that, your Honor.

(Thereupon, at 3:30 o'clock p.m. the hearing was concluded.)

### *Certificate of Official Reporters*

WE, the undersigned reporters of the District Court of the United States for the District of Columbia certify this record to be the official transcript of the proceedings indicated.

JEANETTE RAWLS.  
THOMAS O'NEAL.

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Civil Action No. 4729—47.

In the District Court of the United States  
for the District of Columbia  
(File Endorsement Omitted)

UNITED STATES OF AMERICA, PETITIONER

v.

INTERSTATE COMMERCE COMMISSION AND UNITED STATES  
OF AMERICA, DEFENDANTS

*Petition to Enjoin and Set Aside Order of  
Interstate Commerce Commission—  
Filed Nov. 20, 1947.*

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I

The petitioner, the United States of America, brings this petition against the Interstate Commerce Commission and the United States of America, for the purpose of suspending, enjoining, setting aside, and annulling a certain order made and issued by the Interstate Commerce Commission (hereinafter sometimes referred to as the Commission) on July 25, 1947, in a proceeding before the Commission known as *United States of America v. Aberdeen & Rockfish Railroad Company, et al.*, Docket No. 29117. Copies of said order and three reports made by the Commission in that proceeding, which by the terms of the

124 order were made a part thereof, are attached to this petition and made a part hereof by reference, as Appendices I, II, III and IV, respectively.

## II

This action arises under the United States is made a defendant herein, and the jurisdiction of this court rests on the Urgent Deficiency Act of 1913, 38 Stat. 219, 28 U. S. C., Secs. 41, 43-48, and Section 17 (9) of the Interstate Commerce Act, 54 Stat. 916, 49 U. S. C. 17.

## III

This petitioner, acting by and through its War Department, in the performance of its military functions and in the prosecution of the war, has shipped over the lines of the several trunk line railroads serving the port of Norfolk, Virginia, a substantial volume of goods from various points in the United States to Norfolk, Virginia, for transportation by vessel to points beyond Norfolk, and has shipped over the lines of these same railroads from Norfolk, Virginia, to various points throughout the United States a substantial volume of goods which have been transported to that point by vessel from points beyond Norfolk. These shipments consisted of so many different items that it is impractical to list them in this petition. The transportation charges on such shipments have been, or will be paid by this petitioner.

## IV.

125 For many years water-rail traffic has been interchanged over piers at the Port of Norfolk, Virginia. Among such piers are Army Base piers 1 and 2, which for over 20 years have been among the principal pier facilities at that port for the handling of general import, export, coastwise and intercoastal traffic, interchanged with the railroads serving the port. Army Base piers 1 and 2 were built by this petitioner shortly after World War I, and from April 1920, until June 15, 1942, were leased to private interests, known as terminal operators, for commercial peacetime operation as public terminals. Soon after completion, these piers were leased to the City of Norfolk, which operated them as municipal terminals until September 1, 1925. Norfolk Tidewater Terminals, Inc. then leased the facilities and operated them until July 1, 1940. From that date to and including June 14, 1942, these piers were leased to and operated by Transport Trading and Terminal Corporation.



## V

Due to the emergency caused by its participation in World War II, it became necessary for this petitioner to supervise the operation of all Atlantic coast deep-water terminals in order to supply its armed forces overseas. As the result, the Hampton Roads Port of Embarkation was established to embrace the principal port facilities in the Norfolk area, including Army Base piers 1 and 2. Thus, effective on June 15, 1942, the lease of Army Base piers 1 and 2 to the Transport Trading and Terminal Corporation was cancelled and thereafter this petitioner's War Department operated these piers.

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## VI

For more than 50 years, it has been the general practice of railroads serving North Atlantic ports, including Norfolk, to load from pier to car and unload from car to pier water-borne traffic which they move by rail to and from those ports. Many of the railroads serving the Port of Norfolk do not own piers where they may perform this service, but they provide the necessary facilities under contracts with terminal operators who act as their agents and furnish wharfage, or pier facilities, for the use of these railroads, and perform handling of freight consigned to and from those facilities.

## VII

At all times during which Army Base piers 1 and 2 were leased and operated by private terminal companies, the railroads serving the Port of Norfolk, with certain exceptions not material here, held themselves out in their tariffs applicable to traffic moving on shipside rates to and from that port to absorb the cost of wharfage and handling of such traffic between cars and pier floor. Those railroads have in practice, delivered the cars on piers owned and operated by them or their agents, the local terminal companies. Under this arrangement, they paid the Transport Trading and Terminal Corporation a charge of 1 cent per 100 pounds for the use of the piers and a charge of 3 cents per 100 pounds for its loading or unloading service. Soon after the War Department assumed the handling of freight over these piers, it made a number of requests in writing that the railroads pay to it an allowance for wharfage and handling services equal to the amount that had been paid theretofore to the terminal operators for this same service. These requests were refused and

no allowance for wharfage and handling was made to this petitioner by the railroads. Instead, the railroads continued to charge the full line-haul rates for the transportation of this petitioner's traffic moving on shipside rates over Army Base piers 1 and 2, and they failed and refused both to provide wharfage and perform the handling services, as contemplated by their tariffs, and to make any allowances for these facilities and services.

### VIII

During the time these piers were leased and operated by the terminal operators, handling of the freight between cars and pier floors was performed by the terminal operator with civilian labor. After the War Department took over these piers the handling service was performed by it with the same civilian employees, under the same supervisory force, and in the same manner as it had been performed previously by the terminal operator. The responsibility of the defendants under their published tariffs was therefore discharged in substantially the same manner by the War Department as theretofore by the terminal company. On May 22, 1943, the War Department requested the railroads to perform the handling service on its traffic to the same extent that such service had for many years been included in the line-haul shipside rates. The railroads likewise refused this request and at no time after the War Department assumed the operation of Army Base piers 1 and 2, did they offer to perform, or perform the handling service.

Thus, prior to 1942 wharfage and handling between cars and ships at the particular piers here involved were provided by private interests and the charges therefor, totaling 4 cents per 100 pounds, were absorbed by the railroads. But when this petitioner found it advisable or necessary, on account of the exigencies of war, to take over these terminal facilities, the railroads refused both to continue to perform the handling services and to reimburse this petitioner in any amount for the use of the wharfage facilities and the cost of handling, which it was forced by this refusal to assume, with the final result that this petitioner had been deprived of the full service to which it was entitled under the shipside rates, and the line-haul carriers have collected and retained compensation for services which they did not perform.

## IX

As the result of the railroads' failure and refusal to provide wharfage facilities and to perform the necessary handling services or to make an allowance therefor, on April 15, 1944, this petitioner filed with the Interstate Commerce Commission a complaint alleging that such failure and refusal constituted violations of Sections 1 (5) (a), 1 (6), 2, 6 (8), and 15 (13) of the Interstate Commerce Act.

There was sought for the future an allowance to this  
129 petitioner for the wharfage and handling services provided on this traffic or, as an alternative, an order requiring the carriers to render such services, or a segregation of terminal charges from the line-haul shipside rates; and an award of damages on past shipments on which this petitioner has been required to assume the expense of wharfage and handling.

The defendant carriers, by separate answers, denied generally the allegations of the complaint. The proceeding was heard at Norfolk, Virginia, on July 18 and 19, 1944. The parties excepted to the examiner's proposed report and on April 5, 1945, the issues were argued orally before Division 2 of the Commission.

Thereafter, the Commission, by Division 2 (Commissioner Barnard dissenting), by order of August 3, 1945, found that the refusal of defendants to furnish wharfage and perform handling services or to make a reasonable allowance to the petitioner in lieu thereof, was an unreasonable practice, in violation of Section 1 (6) of the Act, and was unjustly discriminatory, in violation of Section 2. The Commission awarded reparation at the rate of 4 cents per 100 pounds with interest. (See Appendix II.)

## X

Thereafter, on petitions of certain of the railroads, the proceeding was reopened for reargument and reconsideration, and the effective date of the order made on August 3, 1945, was postponed indefinitely pending final dis-  
130 position of the matter. On May 3, 1946, the Commission (Commissioners Aitchison, Splawn, Alldredge and Rogers dissenting) reversed its prior decision, vacated its order, and dismissed the complaint (See Appendix III), finding that the railroads' refusal to make this petitioner an allowance or to perform the services or to state in their tariffs the wharfage and handling charges at Norfolk separately from their rates was not shown to have been an un-



just or unreasonable practice, or to have resulted in unreasonable or inapplicable rates, or to have been unjustly discriminatory to this petitioner.

## XI

Thereafter, upon further consideration of the record, and upon consideration of petitions for reargument and reconsideration, the proceeding was reopened for reargument, and on July 25, 1947, the Commission (Commissioners Aitchison, Splawn, Johnson, Alldredge and Rogers dissenting) affirmed its findings in the prior report on reconsideration and ordered the complaint dismissed. (See Appendix IV.)

## XII

The order of the Commission of July 25, 1947 (Appendix I) is unlawful and void, and beyond the power of the Commission to make for the following reasons:

- (a) Said order lacks a rational basis in that the findings made by the Commission do not support its ultimate conclusions;
- 131 (b) The Commission failed to make essential findings of fact that would support rationally the order made by the Commission;
- (c) The findings of fact made by the Commission are not supported by any substantial evidence;
- (d) In making said order, the Commission misapplied law;
- (e) The Commission's order is otherwise arbitrary, capricious and without support in and contrary to law and the evidence.

## XIII

By reason of the arbitrary and capricious action of the Commission in entering its order of July 25, 1947, this petitioner is left without an adequate remedy at law and it will be subjected to irreparable damage if the relief hereinafter prayed for is not granted.

WHEREFORE, this petitioner prays that:

1. Pursuant to the statutory provisions referred to in paragraph II of this petition, there be constituted to hear this case a special court of three judges, one of whom shall be a circuit judge;

2. Upon final hearing and submission herein, the Court adjudge and determine that the order of the Interstate Commerce Commission of July 25, 1947 (Appendix I), is unlawful, arbitrary, capricious, without support in and contrary

to law and the evidence; that a decree be entered perpetually enjoining, setting aside and annulling the said  
 132 order; and that the matter be remanded to the Commission for further action not inconsistent with this Court's decree; and:

3. This petitioner have such other and further relief in the premises as the nature of the case shall require and to this Court shall seem proper.

JAMES E. KILDAY,

DAVID O. MATHEWS,

*Special Assistants to the Attorney General.*

FRANK F. VESPER,

JAMES C. MOORE,

*Special Attorneys.*

TOM C. CLARK,

*Attorney General.*

JOHN F. SONNETT,

*Assistant Attorney General.*

GEORGE MORRIS FAY,

*United States Attorney.*

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*Appendix I*

**ORDER**

At a General Session of the INTERSTATE COMMERCE COMMISSION held at its office in Washington, D. C., on the 25th day of July A. D. 1947

No. 29117

UNITED STATES OF AMERICA V. ABERDEEN &

ROCKFISH RAILROAD COMPANY, ET AL.

*It appearing,* That on August 3, 1945, the Commission, by division 2, made and filed its report and entered its order in the above-entitled proceeding; that on May 3, 1946, the Commission made and filed its report on reconsideration and entered its order in said proceeding, and that at a later date the Commission reopened the proceeding for reargument and reconsideration;

*It further appearing,* That reargument has been heard, and the Commission on the date hereof, has made and filed its report containing its findings of fact and conclusions thereon, which said report, and reports of August 3, 1945, and May 3, 1946, are hereby referred to and made a part hereof:

*It is ordered.* That the complaint in this proceeding, be, and it is hereby, dismissed.

By the Commission.

[SEAL]

W. P. BARTEL, *Secretary.*

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*Appendix II*

INTERSTATE COMMERCE COMMISSION

No. 29117

UNITED STATES OF AMERICA V. ABERDEEN &  
ROCKFISH RAILROAD COMPANY ET AL.

*Submitted April 5, 1945. Decided August 3, 1945.*

Defendants' failure to make complainant an allowance for wharfage and handling incident to shipside receipt and delivery of its export, import, coastwise, and intercoastal freight at Army Base Piers 1 and 2, Norfolk, Va., or to furnish wharfage and perform the handling service themselves, found to have been and to be an unjust and unreasonable practice, and to result in unjust discrimination in violation of sections 1 and 2 of the Interstate Commerce Act. Defendants ordered to cease and desist from such violations, and reparation awarded.

*Francis M. Shea, Donald B. MacGuineas, Major Edward H. Cox, and First Lieutenant E. F. Huber* for complainant.

*Windsor F. Cousins, Anthony P. Donadio, Harold H. McLean, Charles P. Reynolds, A. J. Dixon, John C. Donnelly, D. Lynch Younger, Lawrence Chaffee, R. D. Brooks, and C. H. Ware* for defendants.

*Powell G. O'Neil* for State Corporation Commission of Virginia, intervenor.

*H. J. Wagner, Charles R. Seal, Samuel H. Williams, Frederick E. Brown, Wilbur LaRoe, Jr., Arthur L. Winn, Jr., F. J. D. MacKay, H. V. C. Wade, and Edward K. Lauer* for other intervenors.

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REPORT OF THE COMMISSION

DIVISION 2; COMMISSIONERS SPLAWN, ROGERS, AND BARNARD

By Division 2:

The parties excepted to the examiner's proposed report, and the issues were argued orally. Our conclusions differ from those recommended by the examiner.



By complaint filed April 13, 1944, complainant, hereinafter also referred to as the Army, alleges in effect, that the defendant's refusal to make it an allowance for wharfage and for its cost of loading and unloading to and from cars, herein called handling, incident to shipside receipt and delivery of its export, import, coastwise, and inter-coastal freight at Army Base Piers 1 and 2, Norfolk, Va., was and is an unjust and unreasonable practice and resulted and results in rates<sup>1</sup> that were and are unreasonable, unjustly discriminatory, and inapplicable. The Commission is asked to require the defendants for the future to perform the service or to pay the Army an allowance for its costs of wharfage and handling, or to state in its tariffs separately from its rates these wharfage and handling charges at Norfolk. The Army also requests reparation on past shipments handled by it over these piers.

The State Corporation Commission of Virginia, the State Port Authority of Virginia, the Norfolk Port-Traffic Commission, the Richmond, Va., Chamber of Commerce, the Baltimore, Md., Association of Commerce, the Chamber of Commerce and Board of Trade of Philadelphia, 136 Pa., and the Port of New York Authority intervened. They are neutral except as hereinafter indicated.

For more than 50 years it has been the general practice of railroads serving north Atlantic ports, including Norfolk, to load from pier to car and unload from car to pier water-borne freight which they move by rail to and from those ports. The practice is limited by tariff provision to specified types of traffic, and, while it originated on traffic handled at railroad-operated piers, it has been extended to public piers operated by steamship companies, municipalities, pier companies, or individuals.

The practice of railroads serving south Atlantic and Gulf ports differs somewhat. Their port charges are generally published separately from the line-haul rates, *Wharfage Charges at Atlantic and Gulf Ports*, 157 I. C. C. 663, 680, but they absorb such charges, subject to tariff limitation. Where their rates between Norfolk and points in the South, plus the wharfage and handling charges at that point, exceed the rail-water rates to or from Baltimore, Md., the latter are applied as maxima to or from Norfolk.

<sup>1</sup> Rates and charges unless otherwise indicated will be stated in this report in amounts per 100 pounds, and are those applicable on classes of freight just described.

Some of the railroads serving the port of Norfolk do not own public piers where they may interchange freight moving by water to or from that port with water carriers, but they provide them under contracts with terminal operators acting as their agents to furnish wharfage, or pier facilities for the use of the railroads, and perform handling of freight consigned from and to those facilities. The rates of the railroads for transportation to and from Norfolk generally include or their tariffs provide for absorption of the charges of the pier operators for wharfage and handling at their respective terminals. The names of these terminals are set forth in the tariff of the Norfolk and Portsmouth Belt Line Railroad Company, herein called the Belt. It is owned equally by eight line-haul carriers reaching the port of Norfolk and performs terminal services for them in the Norfolk port area, including switching to and from the pier terminals just described. In 1925 the Pennsylvania, having no pier facility in Norfolk, and desiring to provide service for shippers and to secure an agent for solicitation of water-borne traffic over its lines, entered into a contract with Norfolk Tidewater Terminal, then operating the Army Base as a public pier facility, to act as such agent. The stipulated compensation to it for such service, which was termed compensation for wharfage, was 20 cents per ton of freight moving over the pier. This carrier also employed this terminal operator to load freight to and from cars for compensation of 60 cents per ton.

The Belt publishes in its tariff charges of 1 cent for wharfage and 3 cents for handling general freight. The official territory lines serving the port, except the Chesapeake & Ohio provide in their tariffs that the aforesaid charges of the Belt will be included in the freight rate to or from Norfolk thus effecting, in substance, an absorption of those charges. The tariffs of other individual lines which use their own or leased pier facilities at Norfolk likewise generally provide for absorption of such charges as published by the Belt or the inclusion in their rates to or from Norfolk of wharfage and handling at their own terminals or the absorption of the charges of their agents, the pier operators, for similar services, not to exceed the amounts above stated.

The provision in the contracts referred to for absorbing the wharfage and handling charges of the terminal, excludes traffic owned by the terminal operator, but in the tariffs providing for such absorption there is no exception as to traffic owned by the shipper.

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With the rapid increase of its military forces overseas it became necessary in 1942 for the Federal Government to use all Atlantic coast deepwater terminals to supply its troops. As a result the Hampton Roads Port of Embarkation was established on June 15, 1942. It embraced several port facilities in the Norfolk area, including the Army Base piers and was one of the largest ports, in volume of freight shipped, used by the Army at the time of the hearing. Other east coast ports such as Baltimore, Md. and Philadelphia, Pa., also served as cargo ports of embarkation.

Complainant owns Army Base piers 1 and 2 which were built on its waterfront tract, developed as the Army Base. The piers were completed soon after World War I and for over 20 years have been one of the principal public pier facilities in Norfolk for the handling of general import, export, and coastwise traffic interchanged with the railroads serving the port. Soon after completion they were leased to the city of Norfolk which operated them as municipal terminals until September 1, 1925. Norfolk Tidewater Terminals, Inc. then leased the facilities and operated them until July 1, 1940. From that date to and including June 14, 1942, the piers were leased to and operated by Transport Trading and Terminal Corporation.

The Army Base piers consist of 2 converted concrete piers each about 1,200 feet long, at which 8 modern cargo vessels can be docked and worked simultaneously. There are sunken tracks extending down the center of each pier and there are also marginal tracks on wide aprons on both sides of each pier. One side of each pier is equipped with heavy lift cranes and the inshore ends are connected by concrete roadways with warehouses farther inland. The

139 Army Base property extends inland from the piers about 2 miles to the Virginia Railway, and includes a storage yard about a mile from the piers, accommodating about 500 cars.

The only other facilities for the handling of general export and import cargo in the Norfolk harbor are the two Lambert Point piers of the Norfolk & Western Railway Company, one 1,200 feet long, with single marginal track on one side and a depressed track down the center, and the other about 850 feet long, with a marginal track on one side and no berthing facilities on the other, and Pinner's Point pier of the Southern Railway Company at Portsmouth, a wooden structure not over 900 feet long. It has a rather narrow apron, depressed tracks down the center, marginal



track on one side, and depth of water on the other that does not permit loading of modern cargo vessels. There is no mechanical equipment at these piers.

Of the volume of traffic which moved over the Army Base piers in 1943, aggregating hundreds of thousands of tons per month, about 37 percent could have been handled over the piers just described if the Army Base piers had not been available. That volume<sup>2</sup> was estimated at about 10 times the average peacetime tonnage handled over the Army Base piers. The flow of this traffic to the ports was regulated by the Office of Defense Transportation under permit and the handling operations were continuous. Section 6 (8) of the act provides, among other things, that in time of war carriers shall adopt every means within their control to facilitate and expedite military traffic.

The Army has leased a pier of the Norfolk & Western at Sewall Point, about a mile north of the Army Base piers and known as the United Nations Depot. It is used for "lend-lease" traffic and as an Air Corps "in-transit" depot. There the Army has hired the Lincoln Tidewater Terminal, Incorporated, to do the handling on a cost-plus-a-service-fee basis. Under certain contracts the defendants pay this pier operator, except on Army traffic which is handled by the Army chiefly with soldier labor, a wharfage and handling charge of about 4 cents. The payments are turned over to the Army since the Army pays the pier operator for the use of the facilities and the handling. The method of loading and unloading at this pier, the Lambert Point piers and the Army Base piers is the same. At the Lambert Point piers, where an allowance is made, the car unloading is done by civilians and in certain cases by military personnel.

The Army also operates piers owned by defendant, Chesapeake & Ohio at Newport News, Va., using that company's labor, its pier superintendent, and other supervisory employees under a contract, defendant paying it an allowance of 50 cents a ton for handling. No wharfage is involved as defendant maintains the piers without expense to the Government. Commercial freight may move over these piers by consent of the Army, and the Chesapeake & Ohio performs the handling thereof. At Baltimore the carriers handle the Army's carload freight. They also pay

<sup>2</sup> Much of this was transferred directly from open top equipment, and no handling of the nature herein described was involved.

the Army an allowance on certain less-than-carload freight that requires and is accorded special handling by the Army on railroad piers. They pay handling allowances to the Army at Boston, Mass. The allowances here mentioned are made under section 22 of the Interstate Commerce Act, which provides that the carriers may transport, store, or handle property for the Federal Government free or at reduced rates.

The Belt operates over the line of the Virginian Railway Company in reaching the Army Base. Cars 141 which it receives from the line-haul carriers are classified in a yard adjacent to the Army Base and when ordered by the Army are hauled to the base in mainloads and placed on tracks in the storage yard or other tracks near the north gate immediately inside the base as designated by the Army. After this placement, yardmasters in the base yard, under supervision of the Army, issue instructions for switching cars between that yard and the piers and for placing them on and removing them from the piers. This is done with motive power and crews supplied in part by the Belt and in part by the Army but working in a pool under Army supervision and control.

During the period when the railroads employed the agents above named to operate the Army Base pier facilities, it was the practice of defendants to place boxcars for loading or unloading at points on the piers adjacent to the berth at which the steamer docked, and for the pier operators to load and unload the freight from or to points on the pier, generally referred to as the ship's loading berth. The Belt switched cars to and from the piers, except that prior to 1940 one operator used its own locomotive for most of such switching.

The handling of the freight between cars and pier floor prior to June 15, 1942, was performed by the pier operator with civilian labor. On that date the Army took over the piers, but there was no change in this loading and unloading operation. The Army, utilizing the existing organization, performed the service with the same civilian employees, under the same supervisory force, and did the work, at its own expense and in the same manner as the terminal operator. Gradually, as additional labor to handle the greater volume was required, troops were used to assist in 142 the unloading operations. At the time of the hearing, they represented about one-half of the total force employed for that purpose. If the Army had not taken its property, the terminal company, with proper

organization, could have continued the operation. The commanding general of the port testified, however, that unified control, and Army supervision and coordination of the car unloading with the allocation of ships would have been necessary. Whether such operation could have been conducted without the aid of military personnel to augment the labor force is not clear from the record. An operating manager of the terminal company who continued in a similar capacity in the employ of the Army testified that it could not. There is also testimony to the effect that sufficient additional civilian labor could be obtained to do the work, and that the Army would not object thereto. There is no evidence that coordination of activities on the piers was not accomplished effectively or that the services of defendants' agent were unsatisfactory to the Army prior to the date it assumed control. Nor is there evidence from which we may conclude that performance of the handling services by defendants on and after June 15, 1942, would have been or is incompatible with such supervision and coordination by the Army as it deemed necessary. Since that date, the services were performed by the Army, but defendants have charged and complainant has paid the same rates as it did prior thereto on all of its water-borne freight which moved over the Army Base piers. No allowance or any deduction for wharfage and handling has been made to complainant.

The Army allows the piers to be used for commercial bulk freight when that traffic can be handled without interfering with the movement of military freight. Shippers of commercial freight make their own arrangements with the Army. Complainant asks that it be reimbursed for wharfage and handling which it performed on such traffic, aggregating about 700 carloads since 1942, and for which it has received no payment from defendants. As this traffic was not the property of complainant, and in the absence of a showing that it was the duly authorized agent of the owners thereof, no allowance with respect thereto can be paid to complainant under section 15 (13) of the act, and no other authority for such payment has been shown. *United Chem. & Org. Products Co. v. Director General*, 60 I. C. C. 523.

There is no evidence that defendants at any time after June 15, 1942, offered to continue handling of the freight at these piers, nor that the officers in charge of the piers did or would refuse to allow that service to be performed



by defendants, had they so offered. If the carriers were willing to perform the handling, the commanding officer would permit them to do so with the same civilian force as used by the Army, subject to screening of such employees and the Army's fire, safety, and sanitary regulations, and with the right to supplement such forces, when inadequate, by troops.

Soon after the Army took over the Army Base and undertook the handling of its freight, it made several written requests of the defendants to pay it an allowance therefor. In making these requests it pointed out that during the period when the piers were leased from the Government and operated by the terminal corporation for defendants, the latter had compensated that operator for wharfage and handling services which it performed, but that when the Government canceled the lease and took over the piers, defendants' terminal tariffs were not amended to authorize payment of the compensation to the Government, the same

as formerly allowed the private operator. The re-

144 requests were refused by defendants on the ground that where control or operation of piers or other facilities is taken over by the Government for its own use or they are operated under contract with the Government and under Government supervision, such facilities should be treated the same as piers operated or controlled by the owners of the property transported, and loading and unloading should not be performed by the carriers, nor any allowance made in lieu thereof. This, in substance, is still the position of defendants, their contention being that the Army is a private pier operator like any private shipper who decides to operate his own pier for the advantages and convenience of his own business.

On May 22, 1943, the Army made written request of all defendants serving Norfolk to perform the handling service, to the extent that it had for many years been included in the line-haul rates. Defendants declined to perform the service on the same grounds on which they had refused the allowances, i. e., that the railroads at north Atlantic ports generally do not hold themselves out to handle waterborne freight on private piers or piers controlled by the owners of the traffic.

Defendants say they have no desire to penalize the Government and that its freight has always had the advantage accorded freight of other shippers, but that they are apprehensive that the granting of the request would destroy the principle which has served to restrict this port practice to

the purposes under which it arose and to hold the practice within reasonable limits; and that the absorption would be in effect at the Army Base today on Government freight if the Army had not taken over the facility to obtain the advantages of control over its own freight.

The principal defense for the failure and refusal to provide the services, as had been done prior to June 145 15, 1942, or to make an allowance in lieu thereof, is that beginning on that date the piers were used to such an extent for military purposes in handling freight owned by complainant that they could no longer be regarded as public piers open for commercial traffic.

In *Elimination of New York, N. H. & H. R. Pier Stations*, 255 I. C. C. 305, the respondent carrier proposed, by eliminating certain piers at Boston and Providence, R. I., including one owned and operated by the War Department and another leased and used by the Navy Department, as stations on its line, to relieve itself of its stated responsibility for the expense of loading and unloading freight interchanged with water carriers. The justification advanced for such action, similar to that in the instant proceeding, was that the piers were used to such an extent for military purposes that they no longer could be regarded as public piers open for general commercial traffic. Division 2 said:

Respondent treated these piers for many years as some of its principal port facilities at which commercial shipments were loaded and unloaded, that service being included in the line-haul rates. We are of the opinion that the circumstances upon which it now relies as justification for discontinuance of that service do not warrant the conclusion that the piers in question should at this time be treated as private piers.

The traffic there affected was commercial traffic, but the principle followed was that where, for many years, the service had been included in the line-haul rates and the evidence showed that it was continued, or the cost thereof absorbed when the service was performed for respondent at other piers, it was respondent's duty to continue to include the service in the line-haul rates. The piers 146 at Providence, like the Army base piers at Norfolk, were under the control of the War Department.

The record shows that control by the Army of the piers at Norfolk for its purposes was not and is not incompatible with continued performance by defendants of the loading and unloading services at those piers. Complainant has proved that except for the greater volume of tonnage, for

the switching of which it supplied additional power and crews, there was no change in the manner of moving the cars to or from the piers; that as to a part of the traffic, the Belt, under Army supervision, continued to use its switching power and crews for that purpose and that the methods of unloading and loading remained the same.

For many years defendants used these piers as important port facilities at which they or their agents, the successive pier operators, loaded and unloaded commercial shipments and, at least in recent years, also freight for the Army, that service and wharfage being included in the line-haul rates. Defendants, in disclaiming responsibility for continuing to so include them or make them an allowance therefor to complainant, rely upon *Weyerhaeuser Timber Co. v. Pennsylvania R. Co.*, 229 I. C. C. 463. There division 4 found that defendants' refusal to perform the services incident to transfer of forest products and general traffic between ships and railroad cars at Port Newark, N. J., at piers operated by complainant's wholly owned subsidiary and used by vessels of the Weyerhaeuser Steamship Company, when defendants held themselves out generally to perform such service only at their own or other piers operated as public piers, was not unreasonable, unjustly discriminatory, or unduly prejudicial. To reach

complainant's piers it was necessary for defendants  
147. to operate over tracks of a third party, the city of Newark, and in performing the transfer service they would have been subjected to a charge by the city of 50 cents per ton for the use of those tracks. The city made no charge for use of its tracks in reaching the public piers. The division accordingly found that the conditions under which the transfer services would be performed at the facility used by complainant were dissimilar from those at public piers. No such dissimilarity was or is present here. The reasons there given for defendants' policy of performing the transfer services only at railroad or public piers and not at piers controlled by owners of the freight were "the difficulty of policing the practice, the necessity of performing the handling at the rail carriers' own convenience, the economy resulting from the concentration over a limited number of piers, and the conservation of revenue." The division, in considering these, said:

For example, freight coming into the possession of the owner is regarded as domesticated and is not entitled to the privileges accorded water-borne freight.



Ordinarily carriers cannot handle freight over private piers at their convenience and economical handling cannot be achieved if freight is widely dispersed over many piers. Defendants are fearful that if they are required to perform the transfer services at the piers of Atlantic Terminals, Incorporated, such action will result in extension of the practice beyond reasonable bounds. They show that there are numerous companies at Port Newark and other ports with private facilities along the water front which, by the formation of a pier company or public terminal, would be in a position to demand the performance of the transfer service. At the time of the hearing a new terminal company had been formed to operate on the property of a large shipper at Port Newark and had sought an extension of railroad services at its piers.

We find little, if any, resemblance in the situation at the Army Base to that in the case relied upon. Prior to June 15, 1942, the freight, similar to that to which the controversy here relates was not regarded as domesticated. Nor was it so treated, insofar as the application of rates thereon was concerned, on and after that date. Neither the increased volume of the traffic, nor the fact that military requirements made it imperative that the handling be expedited may be regarded as circumstance sufficient to relieve defendants of their obligation. They no doubt necessitated additional service and supervision, but it does not follow that it would have been impracticable for defendants to perform the handling at their convenience after the Army took possession of the piers. The handling of such a large volume of freight as was concentrated at complainant's Army Base facility would have involved no wide dispersion and is to be presumed as conducive of maximum economy. In no sense could it be regarded as an "extension of the practice beyond reasonable bounds." It is inconceivable that complainant would reap any competitive advantage such as a commercial enterprise would obtain from such extension of a service to it and not made available to other shippers. The record shows that the Army took over the piers only because of military necessity. When defendants had been requested to perform the service, we conclude that it was their duty to do so within a reasonable time thereafter, not later than July 1, 1943.

Prior to June 15, 1942, and for extended periods thereafter, several of the defendants' tariffs provided that wharfage and handling at wharves of the Transport Trading and Terminal Corporations<sup>3</sup> at Norfolk would be included in the transportation under rates to or from that point. But on and after that date, when these tariffs did not name the Army Base piers as such, defendants contend that they contained no absorption provisions applicable to those piers. We do not accept that view. The record is convincing that defendants' practice in designating pier facilities in the tariffs was to indicate them as points, and that they generally used the words "at" and "through" in referring to them, notwithstanding that some of the Norfolk facilities were identified only by the name of some company, which was then or had previously been operating those facilities. For periods ranging from a few months to 10 years from September 1925, when Norfolk Tidewater Terminals, Inc., operated the Army Base piers, they continued to be designated in the port tariffs of the several Norfolk lines as municipal terminals, just as they had been identified when the city of Norfolk had operated them. We conclude that at all times on and after June 15, 1942, when reference to Transport Trading and Terminal Corporation was made in defendants' terminal tariffs, that such reference identified the particular piers or wharves herein referred to as the Army Base piers, and that the services of wharfage and handling at those piers during those times were included in the applicable rates to and from Norfolk and were specified services which defendants held themselves out to perform under those rates. The failure to perform them or make a reasonable allowance to complainant in lieu thereof, during the periods when they were included in the rates which defendants exacted covering those services, was an unreasonable practice. *Borden's Farm Products Co. v. New York, N. H. & H. R. Co.*, 92 I. C. C. 270, 102 I. C. C. 497. The act contemplates that if a carrier receives services from an owner of property transported, or uses instrumentalities furnished by the latter, he shall pay for them. *Interstate Commerce Commission v. Dillenbaugh*, 222 U. S. 42, 46.

The officer who supervised the accounting and auditing operations for complainant at the port submitted a compu-

<sup>3</sup> Also referred to in some tariffs as "Transport Trading & Terminal Corporation" or "Transport Trading and Terminal Corp."

tation of the actual direct cost of unloading all cars unloaded by civilian labor to the pier platform during a 31-day period in 1944, which he considered representative of the period of Army operation. This cost related to about 29,000 tons and was 4.6 cents per 100 pounds. It included the direct cost of the labor at an hourly rate of 64 cents and the supervision by checkers of the laborers at a rate of 95 cents. No element of cost involved in wharfage was included. The cost to defendants if they had absorbed the charges of the terminal operators for similar service would have been 3 cents plus 1 cent for wharfage. Complainant seeks reparation at these rates, which were the customary basis of charge of the terminal operators. We are of the opinion that these rates were and are reasonable bases of compensation for wharfage and handling performed by complainant.

The alternative relief sought by complainant, i. e., that the wharfage and handling charges be deducted and state separately from the rates in defendants' tariffs, is opposed by the north Atlantic port interests, interveners herein, on the ground that it would disrupt the long-standing rate relations among the various competing ports. In *Wharfage Charges at Atlantic and Gulf Ports, supra*, the Commission refused to require separate statement of port terminal charges at Norfolk and other ports. In view of the conclusions herein, no further consideration need be given this matter.

We find that defendants' failure at all times on and after June 15, 1942, when their tariffs contained reference to pier facilities identified as Transport Trading and Terminal Corporation, and their failure and refusal on and after July 1, 1943, to furnish wharfage and perform handling services or to make a reasonable allowance to complainant in lieu thereof, in connection with traffic of complainant handled over the Army Base piers at Norfolk of the same general kind and character as that which had moved over those piers immediately prior to June 15, 1942, and in respect of which wharfage and handling services were included in the rates to and from that port, was, is, and for the future will be an unreasonable practice in violation of section 1 (6) of the Interstate Commerce Act; that defendants' failure and refusal to furnish wharfage and perform handling in connection with complainant's traffic or to make an allowance to complainant in lieu thereof, while contemporaneously furnishing and performing them



in connection with like traffic of other shippers moving through Norfolk, is and for the future will be unjustly discriminatory in violation of section 2 of the act; that complainant furnished wharfage and performed such handling service during the periods as described; and that it has been damaged thereby to the extent of the reasonable cost to it of furnishing such wharfage and performing such handling, which we find to have been 4 cents per 100 pounds, with interest. Complainant should comply with rule 100 of the General Rules of Practice, and it may include a statement on form No. 5 of shipments handled by it during the pendency of these proceedings, accompanied by proof in 152 affidavit form of particular cars in respect of which services were performed. If defendants object to this method of proof a further hearing may be requested.

An order for the future will be entered.

BARNARD, *Commissioner*, dissenting:

I disagree with the majority and believe that the complaint in this proceeding should be dismissed. The evidence indicates that the rates were and are less than reasonable maximum and that the 4-cent allowance approved by the majority will make them just that much below the upper limit of reasonableness. Practically all of the assailed rates are less than the domestic rates. The assailed rates are generally the same as rates to and from Baltimore, Md., although the distances to and from Norfolk generally are greater. For example, from 106 points in official territory, the average distances to Baltimore are 690 miles, whereas to Norfolk the distances from such origins are 838 miles.

Furnishing the wharf and handling the freight at the Army piers are not transportation, but merely facilities provided and work done by a shipper for itself on its own property at its own convenience, before and after the transportation is performed. Defendants may not, therefore, be required to provide a wharf or handle the freight on the Army piers, and not being required to do so, they are not compelled to pay an allowance in lieu thereof. *Propriety of Operating Practices—Terminal Services*, 209 I. C. C. 11.

## Appendix III

## INTERSTATE COMMERCE COMMISSION

No. 29117

UNITED STATES OF AMERICA

v.

ABERDEEN &amp; ROCKFISH RAILROAD COMPANY ET AL.

*Submitted April 3, 1946. Decided May 3, 1946.*

On reconsideration, finding in prior report, 263 I. C. C. 303, that the defendants' failure to make the complainant an allowance for wharfage and handling incident to shipside receipt and delivery of its export, import, coastwise, and intercoastal freight at Army Base Piers 1 and 2, Norfolk, Va., or to furnish wharfage and perform the handling service themselves, was an unjust and unreasonable practice and resulted in unjust discrimination in violations of sections 1 and 2 of the Interstate Commerce Act, reversed. Complaint dismissed.

Additional appearances: *John F. Sonnett* for complainant. *B. F. Brooks, amicus curiae.*

## REPORT OF THE COMMISSION ON RECONSIDERATION

## BY THE COMMISSION:

In the prior report, 263 I. C. C. 303, division 2 found that the defendants' failure to make the complainant an allowance for wharfage and handling incident to shipside receipt and delivery of its export, import, coastwise, and intercoastal freight at Army Base Piers 1 and 2, Norfolk, Va., or to furnish wharfage and perform the handling service themselves was an unjust and unreasonable practice and resulted in unjust discrimination, in violation of sections 1 and 2 of the Interstate Commerce Act. The defendants were ordered to cease and desist from those violations, and reparation was awarded. On petitions of certain of the defendants the proceeding was reopened for reargument and reconsideration, and the effective date of the order entered by division 2 was postponed indefinitely pending final disposition of the matter. We also gave Benjamin F. Brooks, a practitioner, permission to file a petition for intervention and supporting brief as *amicus curiae* giving at the same time, all the parties an opportunity to reply thereto. In the beginning this intervenor was not a party to the proceeding, and he does not represent any particular interests. His views with respect

to the controversy will be discussed hereinafter. In addition to intervenor Brooks, counsel for the complainant, the petitioning defendants, and the several chambers of commerce and port authorities referred to in the prior report participated in the oral argument. Facts stated in the prior report will be restated if deemed necessary.

There have long been piers at Norfolk which have been used for water-borne traffic shipped to and from that port. Two of them, known as Army Base Piers Nos. 1 and 2, were built by the complainant. They were completed shortly after World War 1, and leased to private interests for commercial peacetime operation as public terminal facilities of the railroads. For several years prior to 1942 they were operated by the Transport Trading and Terminal Corporation as a public wharfinger and as an agent of the defendants. By contract that corporation agreed to unload out-bound traffic from the cars to the pier floor and to load in-bound traffic from the pier floor to the cars whenever the defendants were obligated to perform that service. The defendants agreed to pay the terminal corporation a wharfage charge of 1 cent per 100 pounds and a handling charge of 3 cents per 100 pounds on all traffic so handled. The contract imposed duties upon that corporation with respect to that service; protected the defendants in the matter of collection of freight charges, improper delivery, and loss and damage claims, and gave the defendants the right to police and verify the operations of the terminal corporation. The latter also was required to give bond to protect the defendants against its failure to perform its duties. The defendants' tariffs provided for the absorption of these wharfage and handling charges, and for information with respect thereto those tariffs referred to the tariff of the defendant Norfolk and Portsmouth Belt Line Railroad Company, termed hereinafter for convenience the Belt Line. These tariffs did not name, as such, the afore-mentioned piers Nos. 1 and 2 as facilities where the carriers would perform the unloading and loading of cars, but described them as facilities of the Transport Trading and Terminal Corporation.

On June 15, 1942, owing to war conditions, the complainant deemed it necessary to cancel the outstanding lease, take over these two piers, and operate them for the movement of military freight, almost entirely out-bound. Thus the Transport Trading and Terminal Corporation no longer had possession of the two piers and could not continue its



services in the manner that it had done formerly. Apparently through oversight some of the tariffs of the defendants continued for a while to refer thereafter to the absorption of the charges for wharfage and handling at those two piers, but, of course, in the circumstances no such facilities or services were provided by the defendants, and

in effect the tariff provisions were meaningless because the Transport Trading and Terminal Corporation no longer had any facilities at Norfolk. Some of the tariffs still remain unchanged in this respect.

The Belt Line has a classification yard at Berkley, Va., across the river from Norfolk. Although the record is meager and not clear in this particular, apparently prior to June 15, 1942, the Belt Line hauled cars containing out-bound water freight from this classification yard to the piers, and similarly cars containing in-bound traffic were hauled from the piers to the Berkley yard. Adjacent to the two piers and included in the Army Base property there is a storage yard of about 500 cars capacity. Since the complainant took over the operation of the two piers the Belt Line delivers and receives respectively, cars of out-bound and in-bound water traffic at this storage yard on tracks designated by the complainant before placement. The complainant thereupon takes possession of the shipments and controls the movement of the cars beyond to the pier locations. It operates several locomotives of its own with its own crews. In addition the Belt Line contributes a locomotive and two crews, switching and reswitching the cars between the points where the complainant takes over the cars and the piers, and on the piers: all at the direction of the complainant's yardmasters. The unloading and loading of the cars, including the movement of the freight between the cars and the ships or between the pier floors and the ships, are being done by the complainant, generally in accordance with detailed plans prepared in advance for each ship, but subject to change, of course, in emergencies. The freight has had to be handled according to priorities and the various changing conditions confronting the complainant. For example, ships that had been partially loaded or unloaded at times had to be moved away temporarily from the piers and out into the stream

To some extent cars are also delivered through another connection, known as the north gate, to tracks immediately inside the Army Base. All empty cars are returned to the Belt Line through this north-gate connection.

to make room for emergency loading of other ships. Some cars had to be unloaded immediately upon placement on the piers, whereas others were held a short time or the freight therein unloaded and stored on the pier floors or in warehouses in the Army Base before being put aboard the vessel. Frequently, the complainant had to load vessels day and night to meet a convoy deadline hour based on over-sea calls. All activities on the piers had to be supervised and coordinated by a governing head. Since the complainant took over the two piers it has used its own personnel and at its own expense that of the previous pier operator, which did the handling. That is, the same men that did the work for the previous operator, have been doing it for the complainant. As labor shortages developed the complainant assigned Italian service units to this work and often used soldiers en route and sometimes stevedores to supplement regular civilian labor. At the time of the hearing in 1944, the civilian personnel on the piers was only about one-half of the total number employed.

At first, the complainant sought an allowance for this wharfage and handling, or, as an alternative, that the line-haul rates and the charges for that service be published separately in the tariffs, the rates to be reduced accordingly. Subsequently, the complainant indicated a willingness to have the defendants do the work and to let them have its civilian force, subject to observance of rules as to security, safety, fire, cleanliness, et cetera. The defendants could not have performed the service individually but would have been obliged to pool their activities and operate as a unit under the complainant's control.

In *Kingan & Co. Terminal Allowance*, 255 I. C. C. 531, 538, division 3 said that no duty devolves upon carriers to pool switching services in order to accommodate an industry when they could not individually perform the service with their own power at their own convenience and free from interference. And in *John Morrell & Co. Terminal Allowance*, 263 I. C. C. 69, 77, division 3 found that if it is not the duty of carriers individually to switch an industry, such an obligation cannot be created by the pooling of services. In the instant proceeding, the complainant recognized that the civilian force was inadequate and that the defendants could not get the additional manpower needed to handle peak loads. Troops would have had to be used, and obviously anything but operation by the complainant was impractical. We have been advised by the defendants that according to the public press Army officials on August 21,

1945, announced that the Army Base would be converted "back to virtually a civilian activity" and "will replace vacancies in Army ranks and prisoner of war labor with civilians."

By a special tariff provision the defendants' export rates apply on the complainant's shipments although the traffic is not export in the usual sense, as it passes into the possession of the complainant at points adjacent to the piers. The tariffs do not provide for absorption of wharfage and handling charges, or allowances for that service in lieu thereof on traffic moving under domestic rates. As applied to and from public commercial piers the rates of defendants The Pennsylvania Railroad Company, the Norfolk and Western Railway Company, and the Virginian Railway

Company, but not the Chesapeake and Ohio Railway 159 Company or the southern lines," generally include wharfage, that is, rent for the use of the piers which are not owned by the carriers but provided by them under contracts with the pier operators. Subject to exceptions, such as short-haul traffic, lumber, bulky articles, and freight in open cars and tank cars, these rates also include handling the freight for the defendants on the public commercial piers by the pier operators, but not by or for the owners of the property transported.

It is not the legal duty or practice of the carriers to perform handling services on carload freight except in unusual circumstances, such as livestock, or freight that is to be transshipped by the railroads or their agents. Charges are added to the line-haul rates on traffic where wharfage and handling are not included in the published rates. The carriers provide wharfage and handling on traffic where it is in their custody for further movement and the shipper is not present to take possession and handle it. Shippers could not handle their freight without interfering with the carriers' operations on public commercial piers and railroad owned or operated piers. The amounts paid by the carriers out of the rates are the same as the published charges. The same arrangements applied at the two piers here under consideration when they were operated as public commercial piers, and similar arrangements as to handling are in effect at the other north Atlantic ports where the services are performed on public commercial piers by the

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"The rates of the southern lines generally include wharfage and handling only where the Baltimore, Md., rate basis applies and where competition requires it; for instance, from points in Central Freight Association territory.



carriers or their agents not owners of the property transported. Since the complainant took over the operation of its two piers at Norfolk, however, thus furnishing its own wharfage and doing its own handling, there have been no arrangements there for wharfage or handling by or for the defendants, and they decline to pay the complainant an allowance therefor. The complainant contends that the defendants' actions in this respect render the rates relatively unreasonable, subjects it to unjust discrimination, and that the defendants have been following an unreasonable practice in not providing or paying for the wharfage and handling as alleged to have been held out by their tariffs.

In the prior report it was stated that "At the Lambert Point piers, where an allowance is made, the car unloading is done by civilians and in certain instances by military personnel." The petitioners call attention to the fact that the payment is compensation to a railroad agency having no interest in the freight.

The line-haul rates in question are less than reasonable maxima and nothing has been added to them to cover the cost of wharfage and handling. In other words, the carriers never have particularly considered wharfage and handling costs in making the rates. They have always left the matter of charging or not charging for those services to the railroads directly serving the ports. Their line-haul connections do not participate in the absorption or collection of these terminal charges. None of the Norfolk rates exceed the domestic rates; practically all of them are lower. They are generally the same as the rates to and from Baltimore, although movement to and from Norfolk generally entails longer hauls. For example, from 106 important points in central territory the average distances are 838 miles to Norfolk and 690 miles to Baltimore. On class-rate traffic the export and import rates from and to Norfolk are more than 9 percent less than the corresponding prescribed domestic rates.

The complainant asks that it be treated "exactly as commercial interests," and that it should "have the same rights and privileges that a private interest has." Section 2 of the act is to the effect that a carrier shall be deemed guilty of unjust discrimination if it receives from any person a greater or less compensation for any service rendered than it receives from any other person for doing him a like and contemporaneous service in the transportation of

a like kind of traffic under substantially similar circumstances and conditions. The defendants do not pay allowances to private shippers for wharfage or for handling export freight and do not perform the services on private piers. The freight of other shippers which receives the unloading service is not "like traffic," and if handled in the same manner as the complainant's freight the export rates would not be accorded it, much less the accessorial services. If anything, the complainant is being favored, but, of course, this is not unlawful under the circumstances. There is no showing that the defendants have failed to provide reasonable pier facilities, even assuming that they were legally bound to do so, which they deny, and rightfully so, citing section 6 (11) of the act, and *Wharfage Charges at Atlantic and Gulf Ports*, 157 I. C. C. 663, 174 I. C. C. 263. Some of the defendants serving Norfolk have piers at which the complainant's freight could be handled. According to a witness for the complainant, however, the capacity of those piers was sufficient to handle only 37 percent of the traffic that moved over the complainant's 2 piers in 1943. During the height of the emergency the volume of traffic handled at these 2 piers is estimated at 10 times the amount handled normally. The aforementioned railroad piers, therefore, would be able to handle 3.7 times that amount of normal shipments of the complainant.

This proceeding did not arise out of any foreseeable circumstances for which the defendants are responsible, but grew out of the necessities of a national emergency. The defendants did not hire the complainant to provide wharves or to perform the handling service, and the complainant may not require the defendants to hire it. "Whatever transportation services or facility the law requires the carriers to supply they have the right to furnish." *Atchison, T. & S. F. Ry. Co. v. United States*, 232 U. S. 199, 214. The complainant could have had its traffic handled at the defendants' expense if it had used the defendants' piers and had been willing to accept the service the defendants were able to provide. Railroads may limit their terminal services to particular piers if there is no unjust discrimination or undue prejudice. *McCormick Warehouse Co. v. Pennsylvania R. Co.*, 191 I. C. C. 727. They may not be required to operate on private property. *Winnsboro Granite Corp. v. Southern Ry. Co.*, 176 I. C. C. 481. The wharfage and handling at the defendants' public commercial piers are transportation provided by them for the shippers. Pro-

viding a wharf and handling the freight at the complainant's piers are not transportation but merely facilities provided and work done by a shipper for himself on his own property at his own convenience and expense before or after the transportation is performed. The defendants may not be required, therefore, to provide a wharf or handle the freight on the complainant's piers, and not being required to do so they are not compelled to pay any allowance in lieu thereof. *Propriety of Operating Practices—*

163 *Terminal Services*, 209 I. C. C. 11. Moreover, "When a carrier is prevented from performing the service by the election of the industry to perform it, and when the service of the carrier would not meet the needs and convenience of or be satisfactory to the industry, the carrier's duty to perform the service under the line-haul rate is discharged, and there is no obligation resting upon it to make an allowance to the industry for performing the service." Page 29 *ibid*.

The defendants distinguish between traffic moving over private and public or railroad owned piers, and cite *Weyerhaeuser Timber Co. v. Pennsylvania R. Co.*, 229 I. C. C. 463, 472, wherein division 4 said:

Under the present tariffs the rail carriers undertake to load and unload water-borne freight only at railroad or public piers, but in no event at piers controlled by the owners of the freight. At Baltimore the services are performed only at railroad piers, at Camden, Wilmington, and Trenton only at municipal piers, at Philadelphia at either railroad or municipal piers or at privately owner piers which are operated as public piers, but in no case will the service be performed at piers controlled by the owner of the traffic. At Chester the services are performed at a railroad facility and at the pier of a warehousing company, which is operated as a public facility, but the services are not performed on freight in which the warehousing company or its owner has an interest. \* \* \*

The policy of defendants has been to restrict the port practices as much as possible, consistent with adequate service. Piers other than railroad piers are used only when necessary to supplement railroad facilities. In no case is the transfer service performed at a pier controlled by the owner of the traffic. The reasons for this policy are the difficulty of policing the practice, the necessity of performing the handling at the rail car-



164 piers' own convenience, the economy resulting from the concentration over a limited number of piers, and the conservation of revenue. For example, freight coming into the possession of the owner is regarded as domesticated and is not entitled to the privileges accorded water-borne freight. Ordinarily, carriers cannot handle freight over private piers at their convenience and economical handling cannot be achieved if freight is widely dispersed over many piers. Defendants are fearful that if they are required to perform the transfer services at the piers of Atlantic Terminals, Incorporated, such action will result in extension of the practice beyond reasonable bounds. They show that there are numerous companies at Port Newark and other ports with private facilities along the water front which, by the formation of a pier company or public terminal, would be in a position to demand the performance of the transfer service. At the time of the hearing, a new terminal company had been formed to operate on the property of a large shipper at Port Newark and had sought an extension of railroad services at its piers.

Division 4 found that the defendants' refusal to handle freight between the cars and ships at Port Newark, N. J., on the shipper's own pier while they performed that service on nearby public commercial piers on the same kind of traffic moving at the same rates was not unreasonable, unjustly discriminatory, or unduly prejudicial. The facts there are similar to those here.

The complainant emphasizes *Elimination of New York, N. H. & H. R. Pier Stations*, 255 I. C. C. 305. There the respondent railroad sought by a tariff amendment to relieve itself from responsibility for loading and unloading expense on carload freight interchanged with water carriers at certain piers at Boston and Providence, R. I.

165 Division 2 found that the schedules under suspension if permitted to become effective would create undue prejudice and that they were not shown to be just and reasonable. The facts there are not similar to those here. Division 2 stated, pages 307, 308:

It will be noted that different methods of tariff procedure would be employed at Boston and Providence to bring about the proposed changes, but the intended effect is the same in each instance, namely, to relieve respondent of its present stated responsibility for the

expense of loading and unloading the described traffic, from and to the specified piers. Respondent's obligations and services on traffic to and from these piers are not affected in any other way. Line-haul rates to and from Boston and Providence, and switching charges, when applicable in connection therewith, would remain unchanged. Shipments which are handled direct from cars to vessel, or vice versa, are excepted from respondent's present loading and unloading service, and are not embraced in the issues herein.

If the schedules were permitted to go into effect, respondent's obligations with respect to switching of traffic to and from these piers would not be affected by the change. The piers would be shown as delivery points in the Boston switching district from and to which the line-haul rates would apply. Respondent would continue to come on these piers with its switch engines and crews and spot cars thereon, as heretofore. There is not contemplated the physical abandonment of any of the pier facilities.

The division continued by discussing the respondent's reasons for the proposed withdrawal of the loading and unloading services at those piers and stated 166 that the circumstances relied upon did not warrant the conclusion that the piers considered should at that time be treated as private piers. In the instant proceeding, when the complainant took over its two piers the defendants' method of handling the traffic was completely changed. No longer did it have supervision through its agent, the Transport Trading and Terminal Corporation, over the traffic passing over the piers. Instead, the complainant, as owners, took possession of the shipments in the hereinbefore discussed storage yard and north gate adjacent to the piers, and the movement of the cars and freight therefrom to shipside was completely under the control of the complainant. Moreover, in the proceeding referred to, the statute cast upon the respondents the burden to show that the proposed change was just and reasonable. Here the burden is upon the complainant to show that the law has been violated in the particulars alleged. The instant complaint does not contain an allegation of undue prejudice.

Intervenor Brooks favors the relief sought by the complainant, and argues that the wharfage and handling

charges should be published separately from the line-haul rates, the latter being reduced accordingly. Under that arrangement the commercial shipper would pay the reduced rates plus the separate charges, and, so far as the total amounts paid by him are concerned, the situation would not be changed. The complainant, which also favors this method of separate publication of the rates and terminal charges, however, would pay the reduced rates without the separate charges, and the effect would be the same as an allowance. We have the authority to require rates and charges to be published in this manner where and when the facts warrant. The intervening chambers of commerce and port authorities believe that if the wharf-

167 age and handling charges at Norfolk are published separately from the rates the same thing will happen elsewhere along the Atlantic and Gulf coasts and disrupt long-standing rate relations among the various competing ports, changing the flow of traffic to the detriment of one or the other. They are neutral with respect to the complainant's desire for an allowance, but they are interested in the continuance of single-factor rates to each port which include all services rendered by the carriers or their agents, thus preserving the port differential relations. This matter has had our consideration on numerous occasions in the past, and in *Lighterage Cases*, 203 I. C. C. 481, and *State of New Jersey v. Baltimore & O. R. Co.*, 245 I. C. C. 581, we refused to require terminal charges at Boston and New York City to be separated from the rates. Also in *Wharfage Charges at Atlantic and Gulf Ports*, *supra*, pages 678 and 692, after extensive investigation we refused to require port terminal charges at Norfolk and the other ports there under consideration to be published separately from the rates themselves.

Question may arise as to whether rates not including wharfage and handling should be prescribed for application solely to and from the complainant's two piers 4 cents per 100 pounds less than the rates that include wharfage and handling applying at other piers in Norfolk. It is sufficient to say that there is no showing that those rates would be reasonable maxima. In fact, the record is convincing that they are below that level.

Under date of January 24, 1946, the complainant filed a motion to dismiss the Norfolk & Western as a defendant in this proceeding inasmuch as those parties had reached an agreement with respect to the claim of the com-



168 plainant against that carrier. In view of our findings herein, no action by us on this motion is necessary. On reconsideration, we reverse the prior findings and now find that the defendants' refusal to make the complainant an allowance or to perform the services afore-mentioned or to state in their tariffs the wharfage and handling charges at Norfolk separately from their rates is not shown to have been or to be an unjust or unreasonable practice, or to have resulted or to result in unreasonable or inapplicable rates, or to have been or to be unjustly discriminatory to the complainant. The prior order entered in this proceeding will be vacated, and the complaint will be dismissed.

AITCHISON, *Commissioner*, dissenting:

I dissent for reasons stated by COMMISSIONER SPLAWN and ALLDREDGE.

SPLAWN, *Commissioner*, dissenting:

For more than 50 years the defendant carriers serving Norfolk and other north Atlantic ports have held themselves out in their tariffs applicable to traffic moving on shipside rates to and from those ports to absorb the cost of wharfage and the handling thereof between cars and pier floor.

Those defendants have, in practice, delivered the cars on piers owned and operated by them or their agents, local terminal companies. At Norfolk, under this arrangement, they paid the terminal operator of the Army base pier facilities 4 cents per 100 pounds for the use of wharves and its loading or unloading service.

During the war emergency it was necessary, in the public interest, for the Army to take over those facilities and to perform the work theretofore performed by the terminal company. The responsibility of the defendants  
169 under their published tariffs was therefore discharged in substantially the same manner by the Army as theretofore by the terminal company. The issue here is whether the Army should receive the 4 cents for the facility it supplied and the work it has done in place of the terminal company, or whether the defendant railroads serving Norfolk shall be permitted to retain it.

The majority, reversing the division, finds in effect that defendants may keep the money. The facts of record afford no basis in law for such a result. It is conceded that defendants did not provide the facilities and services while holding themselves out to do so, but that is excused as an "oversight."

The conclusion reached is based on an unsound premise, i. e., that the Army base piers constituted a private facility. All the pertinent facts point to the contrary.

Defendants distinguish between commercial freight handled by pier operators on public piers and that handled by private owners thereof when it moves over private piers, owned or leased by them. The Commission has recognized such a distinction when there was a sound basis in fact for doing so, as in *Weyerhaeuser Timber Co. v. Pennsylvania R. Co.*, 229 I. C. C. 463, the principal proceeding upon which defendants herein relied. But, as stated by division 2 in the original report, the facts here will not support such a distinction. The record discloses no similarity between the instant situation and that in the *Weyerhaeuser* case, either as to physical facts or as to the reasons there advanced in support of defendants' policy with respect to the practice of furnishing facilities and service at private piers. Complainant's piers were operated for many years as public piers and, as the record shows, they have been continued in operation as such, commercial tonnage being handled thereover to the extent that use of the piers by the Government, for handling military traffic incident to the war, would permit. The defense of the port lines resting, as it does, on the attempt to distinguish complainant's pier facilities as private piers, lacks force.

The finding that complainant could have had its traffic handled at defendants' expense if it had used the defendants' piers is contrary to the evidence, which shows that only about 37 percent of the traffic which moved over complainant's piers in 1943 could have been handled over defendants' piers. In the light of such conditions one of the principal defendants has conceded the justness and reasonableness of complainant's claim to the extent recognized in the original findings and has made settlement accordingly.

From the foregoing it is apparent that the principles which underlie the findings in the so-called terminal allowance cases, invoked to support the report, are not in point here. The terminal carrier, the Belt Line, continued to perform spotting of the cars, switching them to and from the unloading points on the piers just as it long had been doing. Complainant unloaded them, for which service it seeks compensation. But no issue as to an allowance for the spotting is here presented. All that is involved is the failure of the port lines to provide the same full ser-

vice to which complainant was entitled under the shipside rates as defendants contemporaneously accorded shippers at other ports and at other public pier facilities at the port of Norfolk. The prior findings should be affirmed.

ALLDREDGE, *Commissioner*, dissenting:

Much of the discussion in the majority report seems to me to be irrelevant. Various rulings and doctrines are mentioned which may possibly be sound and correct  
171 in the abstract, but so far as I can see they are not pertinent to the issues here presented.

Even if it be conceded that the ultimate findings in the prior report were in error insofar as they were predicated upon the theory that complainant was entitled to an allowance, the mistake was more of form than of substance. The final result, in my judgment, was correct.

The issue in this proceeding is, after all, a simple one. Prior to 1942 wharfage and handling between cars and ships at the particular piers involved were provided by private interests and the charges therefore, totalling 4 cents per 100 pounds, were absorbed by the defendants. This practice, together with other circumstances shown of record, establishes the fact that the line-haul rates of the defendants were made in contemplation of the absorption by them of these terminal charges. On June 15, 1942, the United States Army found it advisable or necessary, on account of the exigencies of war, to take over these terminal facilities and to perform the services; but defendants continued to exact the same line-haul rates that applied when they absorbed the charges of their terminal agent.

It is true that in publishing shipside rates at this and other ports the carriers have followed the practice of limiting their assumption of terminal costs to those instances in which they perform the services themselves or have them performed under their supervision. These restrictions have been upheld in many cases as lawful, but the validity of such restrictions rests more upon the necessity of policing the transactions in order to prevent violations of the law than upon any essential differences in the transportation services performed. Here the Government

took over certain terminal facilities at which the carriers had heretofore absorbed these transfer charges  
172 and operated them itself. The traffic consisted of

war materials, which moved in such large volume that it is doubtful if the carriers could have readily obtained the labor necessary to perform the services. But, be that as it may, the Government's intervention rendered it unneces-



sary for the carriers to supervise the transfer of the freight. Hence, it seems to me that the logical basis upon which the limitations of shipside rates have usually rested are entirely absent here. The final result of the majority decision is that the line-haul carriers have collected and retained compensation for services which they did not perform. The complaint should therefore be sustained.

COMMISSIONER ROGERS dissents.

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#### Appendix IV

INTERSTATE COMMERCE COMMISSION

No. 29117

UNITED STATES OF AMERICA

v.

ABERDEEN & ROCKFISH RAILROAD COMPANY *et al.*

*Submitted November 6, 1946. Decided July 25, 1947*

On reargument, finding in prior report on reconsideration, 264 I. C. C. 683, reversing finding in original report, 263 I. C. C. 303, that the defendants' failure to make the complainant an allowance for wharfage and handling incident to shipside receipt and delivery of the latter's export, import, coastwise, and intercoastal freight at Army Base Piers 1 and 2, Norfolk, Va., or to furnish wharfage and perform the handling service themselves was an unjust and unreasonable practice and resulted in unjust discrimination, in violation of sections 1 and 2 of the Interstate Commerce Act, affirmed. Complaint dismissed.

Appearances are shown in the prior reports.

#### REPORT OF THE COMMISSION ON REARGUMENT

BY THE COMMISSION:

In the prior report on reconsideration, 264 I. C. C. 683, we reversed the finding of division 2 in the original report, 263 I. C. C. 303, that the defendants' failure to make the complainant an allowance for wharfage and handling incident to shipside receipt and delivery of the complainant's export, import, coastwise, and intercoastal freight at Army Base Piers 1 and 2, Norfolk, Va., or to furnish wharfage and perform the handling service themselves was an unjust and unreasonable practice and resulted in unjust discrimination, in violation of sections 1 and 2 of the Interstate Commerce Act. The complaint was dis-

174. unjust and unreasonable practice and resulted in unjust discrimination, in violation of sections 1 and 2 of the Interstate Commerce Act. The complaint was dis-

missed. Upon further consideration of petitions of the complainant and Benjamin J. Brooks, *amicus curiae*, for reargument and reconsideration, we reopened the proceeding for reargument, which we have heard.

As more fully recited in the prior report on reconsideration, briefly stated the facts are that Army Base Piers 1 and 2 at Norfolk, owned by the complainant, were leased prior to June 15, 1942, to private interests for commercial peacetime operations as public terminal facilities of the railroads. From July 1, 1940, to June 15, 1942, these two piers were operated by the Transport Trading and Terminal Corporation as a public wharfinger and as agent of the defendants. That corporation unloaded the outbound traffic from the cars to the pier floor and loaded the inbound traffic from the pier floor to the cars at a charge of 4 cents per 100 pounds, consisting of 1 cent for wharfage<sup>1</sup> and 3 cents for handling, which charge the defendants serving Norfolk absorbed out of their line-haul rates. The Transport Trading and Terminal Corporation protected the defendants in the matter of collecting freight charges, and against improper delivery and loss and damage claims. The defendants reserved the right to police and verify the operations of the terminal corporation. Due to war conditions, on June 15, 1942, the complainant canceled its lease with the Transport Trading and Terminal Corporation, and took over the management and operation of these two piers for the movement of military freight, almost entirely  
175 outbound. Thus, the terminal corporation no longer had possession of the piers and could not continue its services in the manner it had done formerly.

It is neither the legal duty of the railroads to provide piers, which are essentially steamship facilities, nor to load or unload carload freight except in unusual circumstances, such as livestock, or freight that is to be transshipped by the railroads or their agents. When they obligate themselves to load or unload carload freight, the duty is established by tariff undertaking. In assuming that obligation with respect to export and import traffic, the carriers have restricted the practice to so-called public piers, that is, piers operated by railroads, steamship companies, or public wharfingers, and have excluded the so-called private piers, that is, piers operated by the owners of the freight. See *Weyerhaeuser Timber Co. v. Pennsylvania R. Co.*, 229 I. C. C. 463.

<sup>1</sup> Wharfage is a charge for use of the piers.

One of the questions here presented is whether the defendants, when they refused, subsequent to June 15, 1942, to pay the complainant an allowance for wharfage and handling at Army Base Piers 1 and 2, or, in the alternative, to perform the handling service themselves, violated section 6 of the act, which provides in effect that the carriers shall not depart from the requirements of their published tariffs. The name of the Transport Trading and Terminal Corporation, as a terminal operator at Norfolk as to wharfage, handling, and terminal services being included in the line-haul rates and allowances therefor, was not immediately canceled from the tariffs when the complainant assumed the operation of these two piers on June 15, 1942. The reference in the tariffs in some instances was to the "terminals" and in other instances to the "facilities" of the Transport Trading and Terminal Corporation, but no mention was made in those tariffs to Army Base Piers 1 and 2 by that name. In order to sustain the complainant's contention, therefore, it would be necessary to read into the tariffs words which were not there.

In its petition for reargument the complainant refers to Agent Hokes' tariffs I. C. C. Nos. 712 and 903, as providing for the absorption of terminal charges generally without designation of particular terminals or operators. The export rates in those two tariffs apply only "On traffic which does not leave the possession of the inland carrier until delivered to the ocean carrier or its agent \* \* \*". Subsequent to June 15, 1942, this provision would have prevented the application of the export rates on freight handled through the Army Base, because that traffic "would leave the possession of the inland carrier" when delivered to the complainant, therefore, the defendants included a provision in the tariffs to the effect that the export rates would apply also on shipments consigned to the United States Government and handled through Navy Bases, Navy Yards, or Army Bases for export to foreign countries. By reason of this provision the carriers apply the export rates on traffic moving over the Army Base Piers 1 and 2. There is nothing in the tariffs, however, that requires the defendants to pay the complainant an allowance for wharfage and handling traffic through the Army Base at Norfolk. The provision makes the export rates, but not the absorption arrangement, applicable. As the defendants rightly argue, the granting of one concession does not necessarily require another to the same party. The allegation of a section-6 violation is not sustained.



The Norfolk and Portsmouth Belt Line Railroad Company, owned by the line-haul carriers serving 177 Norfolk, performs terminal services for them there.

The complainant in its petition argues that there was no change in the manner of handling the cars to and from the piers before and after June 15, 1942. In the prior report on reconsideration, we stated that the record was meager and not clear with respect to the manner in which the cars were handled to and from the piers prior to June 15, 1942, but that since that date the cars were being hauled to and from the 500-car capacity storage yard adjacent to the two piers and included in the Army Base property. Disposition of this complaint, however, does not depend upon whether there has or has not been a change in the manner of handling the cars to and from the piers before and after June 15, 1942. Since that date the aforementioned belt line delivers and receives cars of out-bound and in-bound freight at the storage yard just referred to on tracks designated by the complainant before placement. To some extent cars are also delivered through a "north gate" to tracks inside the Army Base. At the storage yard and north gate the complainant takes possession of the cars and directs the movement thereof beyond to the pier locations. It operates several locomotives of its own with its own crews. There is in addition a belt-line locomotive and crew switching between the storage yard and the piers, and on the piers. All of this work is done at the direction of the complainant's yardmasters.

Activities on the piers during the war were at a maximum, and, as described in our prior report on reconsideration, there is no doubt that under the arrangement which became effective June 15, 1942, the defendants would not have been able to continue the work done formerly by the 178 Transport Trading and Terminal Corporation at their convenience and to the satisfaction of the complainant. In *Propriety of Operating Practices—Terminal Services*, 209 I. C. C. 11, 29, we said that "When a carrier is prevented from performing the service (car spotting for delivery) by the election of the industry to perform it, and when the services of the carrier would not meet the needs and convenience of or be satisfactory to the industry, the carrier's duty to perform the service under the line-haul rates is discharged, and there is no obligation resting upon it to make an allowance to the industry for performing the service." The complainant argues that this principle is not applicable to the instant proceeding as a different

factual situation exists. We believe that our pronouncement may well be applied here. Although after June 15, 1942, the Transport Trading and Terminal Corporation had no facilities or terminals at the Army Base, it was the defendants' duty, under their line-haul rates, to place properly the complainant's cars for loading and unloading, and in the circumstances they discharged that obligation when they placed the cars in the complainant's storage yard adjacent to the piers.

With respect to the allegation of unjust discrimination, the complainant asks to be treated the same as commercial or private interests. The defendants argue that when these two piers were taken over by the complainant on June 15, 1942, they became private piers to all intent and purpose. The defendants do not pay allowances to private shippers for wharfage or for handling export freight, and they do not perform that service on private piers. As indicated, the defendants are not legally bound to provide pier facilities. *Wharfage Charges at Atlantic and Gulf Ports*. 157 I. C. C. 663, 174 I. C. C. 263. Notwithstanding that, they do have pier facilities at Norfolk the capacity of which is sufficient to handle almost four times the amount of normal shipments of the complainant. During the war, however, the complainant's traffic increased tenfold. The freight of other shippers at Norfolk which receives unloading service is not the like kind of traffic contemplated by section 2 of the act dealing with unjust discrimination, and if handled in the same manner as the complainant's freight the export rates would not apply, much less the accessorial service demanded by the complainant or an allowance therefor.

There has been discussion in this proceeding with respect to the so-called unjust enrichment of the defendants in retaining the 4-cent allowance while the complainant performed the handling service and furnished the piers. It should be emphasized that the line-haul rates charged on this traffic were and are less than reasonable maxima, and that nothing has been added to them to cover the cost of wharfage and handling. For competitive reasons the defendants accord Norfolk the same export rates as Baltimore, Md., despite the substantially greater distances to Norfolk from important shipping origins. For example, the average distance from 106 representative points to Norfolk is 838 miles compared with 690 miles to Baltimore. Even to New York, N. Y., where the export rates exceed the Baltimore rate by 3 cents on the lower classes, the

distance is less than to Norfolk, i. e., 804 miles. A test of the export rates is provided by comparison with the domestic rates, as the latter (to Baltimore) form the foundation of the export rate structure, and themselves take into account factors of distance and related matters.

The following table compiled from the record shows the sixth-class rates per 100 pounds to Norfolk:

From	Domestic	Export
	Cents	Cents
St. Louis, Mo.....	48	46
Chicago, Ill.....	46	42
Fort Wayne, Ind.....	43	37
Detroit, Mich.....	42	34
Indianapolis, Ind.....	42	39
Cincinnati, Ohio.....	39	35
Columbus, Ohio.....	37	32

In contrast with the foregoing, the domestic and export rates to Baltimore from these same origins are the same in every instance except from Detroit, where there is a 2-cent difference. In using the sixth-class rates for comparison, recognition should be given to the fact that the smallest difference between the export and domestic rates occurs in that class. When the rates from these same 106 points for all six classes are compared, the result is that the export rates to Baltimore average 99.5 percent of the domestic rates, whereas the same condition with respect to Norfolk shows 90.9 percent. At Philadelphia, Pa., and New York, where the differentials serve to increase the rates, the amounts are 96.2 and 94.3 percent, respectively.

As a result of the eastern class-rate revision in 1932, in which we prescribed rates on a distance basis, the long-established differential rate relations were destroyed on domestic traffic. In order to preserve the differential relations on import and export traffic, the carriers deemed it necessary to change the port rates because generally they were higher than the domestic rates prescribed in the aforementioned revision. This change was made by using the prescribed Baltimore domestic rates as a standard. With some few exceptions the Baltimore port rates became the same as the domestic rates, and port differentials were applied to the Baltimore rates. Philadelphia 1 cent over Baltimore, New York 3 cents over Baltimore, and, as in the past, the Norfolk carriers maintained the Baltimore basis despite the sharp difference in



the domestic rates. Just as the New York port rates, which formed the basis for the old adjustment, were made largely on the factor of distance, so the present Baltimore port rates, which now provide the basis for the whole adjustment, are governed by the same distance standard as the domestic rates. Thus, the level of the Baltimore port rates was not influenced by the local port practices at Baltimore, and the port relations are maintained without regard to the practices at the several ports. At New York the principal port privilege is free lighterage, but if free lighterage were abolished and a special charge provided for the service, the defendants do not believe it likely that the New York port rates would be correspondingly reduced, because that would result in rates to and from New York lower than to and from any other north Atlantic port and would upset the entire port relation. Thus it is clear that the level of the port rates does not reflect the additional services performed at the port. Although a wharfage charge at Norfolk heretofore has been absorbed by the carriers serving that port no similar payment to pier operators has been made at New York, Philadelphia, or Baltimore. This difference in practice has had no effect upon the rate level, the record showing that the level of the port rates does not depend upon the existence or non-existence of certain port practices. The fact that the Baltimore port rates are the same as the prescribed domestic

rates indicates that no factor has been included to  
182 cover the extra cost of unloading and loading at

Baltimore. From a large part of trunk-line territory export rates are identical with the domestic rates to the several ports. As stated in the prior report on reconsideration, service at the several ports is accorded by the carriers reaching the port without any participation in the cost by their interior rail connections. The cost of performance varies at the several ports and the privileges are not identical, yet this has had no effect on the rates.

Further, to show that the Norfolk export rates plus the additional charge for terminal services, such as wharfage and handling, do not exceed a maximum reasonable limit, the defendants refer to the fact that freight moving in open-top cars is not usually unloaded by them although subject to the same export rates; that certain commodities, such as lumber and heavy and bulky articles, are excluded from the privilege, although subject to the same export rates; and that considerable export freight is handled over

private piers at the several ports but is excluded from the free unloading privilege. No evidence was adduced by the complainant to show that the export rates to Norfolk, in and of themselves, were and are unreasonably high. The complainant's contention is that these rates are shipside rates and they are unreasonable because no allowance has been made to it for the wharfage and handling. It is well settled that there is nothing inherent in export traffic which entitles it to rates lower than those applied to domestic traffic, and as nothing has been added to the export rates here in issue to cover the wharfage and handling they are not above a reasonable maximum level when a reasonable charge for wharfage and handling is added. This being

183 true, an order directing the defendants to pay the complainant reparation in the amount of the aforementioned wharfage and handling charge would make the export rates just that much below the upper limit of reasonableness. During the argument we were advised by counsel for the complainant that efforts are being made to have these two piers operated in a manner similar to that in effect prior to June 15, 1942. So that the purpose of this proceeding now is for reparation only.

On reargument, we affirm our findings in the prior report on reconsideration. The complaint will be dismissed.

*SPLAWN, Commissioner, dissenting:*

The principal issues presented in this proceeding are whether defendants' tariffs provided that they would pay wharfage for the use of the Army's piers and handling charges for the loading and unloading of traffic moving at shipside rates over those piers; and whether it was a violation of sections 1, 2, 3 and/or 6 of the Interstate-Commerce Act for defendants to refuse to furnish wharfage and perform handling services or to pay complainant for furnishing such facilities and performing such services when defendants collected the full shipside rates.

The report fails to correctly state important provisions of the tariffs; and the conclusion that in order to find the tariffs applicable "it would be necessary to read into the tariffs words which were not there" is fallacious. That question was dealt with in the prior reports by Division 2, but in view of the indicated misconception of the tariff provisions I quote part of Virginian Railway's tariff I. C. C. No. 2196, which is representative of the other line-haul tariffs:

*At Lincoln Tidewater Terminals, Inc., Transport Trading and Terminals Corporation, or Southgate Terminal Corporation (Portsmouth Division Terminals),*

184 Wharfage, handling and terminal charges, as published in Norfolk and Portsmouth Belt Line Railroad tariff No. 6—J, I. C. C. No. 105, will be included in the transportation rates applicable to or from Norfolk, Va., on the following traffic moving in connection with the *Virginian Railway through the above terminals.* [Italics supplied.]

A corporation may own, lease, or operate wharfage facilities, but certainly it is not a terminal and traffic cannot be delivered at or through it. The question is whether the tariffs should be construed in favor of the carriers as being meaningless and of no force and effect, as is done in the report, or in favor of the shipper as designating by the name "Transport Trading and Terminal Corporation" the Army piers as facilities over which the shipside rates applied and at which defendants would absorb the wharfage and handling charges, as was found by Division 2. The latter is the reasonable interpretation, for it permits the export rates to be applied and absorptions made in accordance with the holding out in the rate tariffs. Defendants themselves must have so interpreted the tariffs when they paid allowances to the Norfolk Tidewater Terminals, Inc., from September 1, 1925, to December 1925 and later dates, although its name was not then mentioned in the tariffs.

While it is sound as an abstract proposition that the act does not require rail carriers to provide piers or to load or unload carload traffic, with a few exceptions, we are here dealing with a concrete situation and the facts attending and surrounding that particular situation must be considered in determining defendants' legal obligations. There is nothing in the law which prohibits a rail carrier from furnishing wharfage and loading and unloading carload freight. Where carriers hold themselves out  
185 in their tariffs, as they did here, by the publication of rates which include compensation for the use by shippers of such facilities and for such services, the affirmative assumption of that obligation supersedes any conclusion that might be drawn from the silence of the law on that subject. Defendants cannot legally maintain such rates, collect them, and refuse to furnish part of the services included in them. It is their duty to provide all facilities,



including wharves, and services necessary to enable them to handle, in accordance with the holding out in their tariffs, all traffic that may reasonable be expected to move.

From the time the Army piers were first made available to defendants as transshipment facilities in 1920, they have consistently paid wharfage and handling charges out of the shipside rates to the operators of those piers, except for the intermediate period when the Army operated them. They did so even when they did not have a contract with the operator. The Army piers are the largest, most modern, and best equipped wharf facilities at Norfolk and before the war about 50 percent of the export traffic moved over them. The Government by right of ownership at all times had and exercised the right to determine to whom it would lease or rent those piers. There were three changes in the control thereof before the Army took them over. In none of those instances did defendants refuse to recognize the new tenant or to pay it allowances.

In 1942 the urgency of military requirements demanded an uninterrupted flow of traffic, and this in turn, required coordination of the unloading of cars and the loading of vessels. The traffic moving over the Army piers increased a thousand percent.

There was a labor shortage and it is doubtful whether defendants or the private operator could have obtained the necessary men to perform the unloading of cars. Therefore, it was necessary that the Army take over the operation of the piers. This it did on June 15, 1942. Defendants were advised of that action June 22, 1942, and after considerable correspondence they advised the Army February 16, 1943, that the carriers would not perform the handling services themselves or pay the Army an allowance for wharfage or for performing such services, but they did not reduce the rates. The consequence was that the defendants received and the Government was required to pay 4 cents per 100 pounds more than was contemplated by the tariffs. This was true although the only material difference in the manner of handling the traffic to and from the Army piers before and after June 15, 1942, was that after that date most of the inbound traffic moved in trainloads and on that the Belt performed a 1,600 foot shorter haul. The principal differences in the handling of traffic on the pier property on and after those dates were the change in control of operations on the pier from a private corporation to the Army

and the handling of about ten times as much traffic with proportionately fewer engines and crews, of which, considering the increase in traffic, a much smaller percentage was furnished by defendants.

There is little analogy between the conditions attending the operations of the Army piers by the Army and the operations of piers by commercial shippers. Defendants' responsibility and liability for the safe handling and protection of the traffic ended when it was delivered on the tracks at the Army pier; therefore, there was no necessity for defendants to police the operations. No additional facility was used. Instead there was a greater concentra-

tion of all export traffic as it was confined mostly to 187 the Army piers and the United Nations dock, notwithstanding the immense increase in the volume thereof. Defendants, therefore, received the benefit of such economy as results from a concentration of traffic and the other factors mentioned above. The fact that the traffic left the custody of the carriers was of small consequence in view of the fact that their responsibility therefor ceased when it did so and that there can be no question of the Government diverting the export traffic into other channels, concealing that fact, and claiming the handling charges on traffic so diverted. *Weyerhaeuser Timber Co. v. Pennsylvania R. Co.*, 229 I. C. C. 463, is not in point here.

There is no inference or presumption that because export rates are lower than domestic rates that they are less than maximum reasonable rates. The maintenance of such export rates is so general that it may be said to be standard practice, and we have frequently prescribed them. Due to the port differentials, the export rates to at least three of the principal north Atlantic ports, New York, Philadelphia, Baltimore and Norfolk, are lower in every instance than the domestic rates, the exception being the port to which the domestic rate is treated as the key rate under that adjustment. On all export traffic defendants save the cost incurred in delivering domestic traffic. Defendants' actions here clearly constitute a change in a rate, charge, regulation or practice, and under section 15 (7) of the act the burden of proof is upon them to show that the resulting charge is just and reasonable. That they have failed to do.

For more than 50 years export rates to north Atlantic ports have included wharfage and handling charges, and the rail carriers serving all of those ports either furnish wharves and perform the handling services or ab-

188 absorb the charges of other carriers, municipalities, or public wharfingers. At Boston, Mass., the carriers pay the Army an allowance for handling its own traffic at the Army Supply Base. The Army moves traffic over an unidentified pier at Philadelphia and receives an allowance of \$1.17 a ton through the operator who acts as its agent. The Army unloads its less-than-carload freight at Baltimore and receives an allowance therefor. The report is in error in stating that no allowance similar to that at Norfolk is made at New York, Philadelphia, or Baltimore. The conclusions drawn from that statement are necessarily without any factual basis.

In my opinion there is error in the conclusion that our pronouncements in *Propriety of Operating Practices—Terminal Services*, 209 I. C. C. 11, have, or should have any application here. In that proceeding we dealt with questions of where the services the carriers are obligated to perform at industrial plants at the line-haul rates began and ended. We are here concerned with a situation which arises at an intermediate point while traffic is in transit. *Texas & P. Ry. Co. v. Interstate Com. Com.*, 162 U. S. 197. If the principles announced in that proceeding were applicable at Norfolk when the Army operated its piers, they were and are equally applicable at Norfolk, when the Army piers were and are operated by a private corporation, and at all other ports, but neither the majority report nor defendants suggest that such services and absorptions be discontinued.

In my opinion the rates charged were inapplicable, unreasonable and unjustly discriminatory, and the refusal of defendants to perform the handling charges and to furnish wharfage, or in lieu thereof to pay the Army an allowance, was an unreasonable practice. The complainant is  
189 entitled to reparation in the amount of 4 cents per 100 pounds on all shipments moving at shipside rates over the Army piers while it operated them.

I am authorized to state that Commissioner Johnson joins in this expression.

COMMISSIONER ROGERS dissents.

ALLDREDGE, *Commissioner*, dissenting:

This is the third time this proceeding has been before us, or one of our divisions, for consideration. The issues arise in an area in which several principles of law seem to converge. The correct application of either one would produce a just decision. The issues concern, in the final analysis,



the basic duties and responsibilities of common carriers in connection with the general flow of commerce among and between individual lines or routes. Similar problems were encountered very early in the history of the commerce of the country. Certain principles of law were enunciated by the courts to clarify the problems before the Act to regulate commerce was enacted.

In the first decision by Division 2, 263 I. C. C. 303, the facts and the law were discussed and, in my judgment, a correct conclusion was reached. Upon reconsideration, however, the Commission reversed Division 2 and dismissed the claim of the Government, 264 I. C. C. 683. Upon still further consideration the latter conclusion is upheld and the Government's claim for reparation is again denied.

While I think the discussion by Division 2 in its report, 263 I. C. C. 303, is reasonably adequate for its purpose, the majority now gives concrete expression to a conception of the law which I think demands further discussion. As a matter of fact, the whole structure of the majority's  
 190 report rests upon an assertion of a legal principle which is inappropriate in this case. The report states:

It is neither the legal duty of the railroads to provide piers, which are essentially steamship facilities, nor to load or unload carload freight except in unusual circumstances, such as livestock, or freight that is to be transshipped by the railroads or their agents.

As applied to the factual situation before us this statement of principles is, at best, only partly correct. The duty of providing piers, as a general rule at least, concededly may rest on steamship lines; but any attempt to correlate with the ownership of piers the duty of loading or unloading freight at points of connection between different transportation lines would produce a *non sequitur*, as it does here. There is no logical relation between the two. The duty of loading and unloading carload freight at origin and destination has long been recognized as that of the shipper and consignee. But equally long has it been recognized that a railroad's duty, when it receives freight for shipment beyond its own lines, is to take all steps reasonably necessary to effectuate delivery to its connection en route to final destination. This was the rule of the common law. In *Myrick v. Michigan Central R. Co.*, 107 U. S. 102, 106, it was held:

If the road of the company connects with other roads, and goods are received for transportation beyond the

termination of its own line, there is superadded to its duty as a common carrier, that of a forwarder by the connecting line; that is, to deliver safely the goods to such line—the next carrier on the route.

That this same duty extends to a connecting water line was specifically recognized in *Texas & Pacific Ry. Co. v. Reiss*, 183 U. S. 621, 625.

191 This basic common law duty has not been abolished by the Interstate Commerce Act. On the contrary, section I (4) requires carriers by railroads to afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines and connecting lines, both rail and water. Compare *Compagnie Auxiliaire v. D. L. & W. R. Co.*, 87 I. C. C. 443, 446.

On export traffic "shipside" rates, which include all necessary handling to bring the freight within reach of ships' tackle, have had an unquestioned place in tariff schedules of railroads. They have applied for years at Norfolk. Under such rates defendants had, prior to June 15, 1942, undertaken, as part of their transportation duty, the terminal handling of export traffic at the same piers as those used by the Government. The change in the quality of the proprietorship of the piers and consequent disability of defendants to fulfill their recognized obligation did not dissolve it. The physical characteristics of the complete transportation service did not change. Only certain incidents in connection with the transfer of the freight from rail to steamship were altered. In such case the question of tariff applicability, which turns upon purely technical considerations, is not decisive. Reasonable tariff regulations and restrictions may govern the conditions under which such service is to be accorded. But if the transfer of the shipments in this case is a common carrier obligation defendants must afford it upon reasonable terms; or, if in changed circumstances, the shipper relieves the carrier of its burden then the latter is entitled to receive a just and reasonable allowance therefor under section 15 (13). See *El Dorado Terminal Co. v. General American Tank Car Corp.*, 308 U. S. 422.

192 But even if an allowance were not proper, there are other provisions of law which would intervene to protect the Government in this case against an exaction of unreasonable or unjustly discriminatory charges as pointed out by Division 2 in the first report.

I am authorized to state that Chairman Aitchison joins in this expression.

In the District Court of the United States  
 (Title Omitted)  
 (File Endorsement Omitted)

193 *Answer of Interstate Commerce Commission—Filed*  
*Dec. 19, 1947.*

The Interstate Commerce Commission, defendant in the above-entitled action, hereinafter called the Commission, for answer to the petition, answers and says:

FIRST DEFENSE

This Court is without jurisdiction under the Urgent Deficiencies Act of October 22, 1913 (38 Stat. 219, 28 U.S.C., Secs. 41, 43-48), to entertain the petition for the following reasons: .

1. It is apparent from the petition (Paragraph III, Appendix IV, p. 61) that petitioner seeks review only of an order denying reparations for past violations of certain provisions of the Interstate Commerce Act, whereas such an order denying reparations is not reviewable in a specially constituted court under the Urgent Deficiencies Act.

2. Petitioner, having elected to bring its claim for reparations before the Commission by complaint and, having pursued that remedy to a determination, is precluded from now resorting to the alternative procedure of an action before a Federal District court, whether regularly constituted or whether, as here, a specially constituted district court.

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SECOND DEFENSE

Without waiving the allegations of the First Defense and further answering the petition, the Commission answers and says:

I.

Answering paragraph I of the petition, the Commission admits the allegations thereof.

II.

Answering the jurisdictional allegations of paragraph II of the petition, the Commission denies the same for the reasons set forth in the First Defense.

III.

Answering paragraphs III to V, inclusive, of the petition, the Commission admits the allegations thereof.

IV.

Answering paragraphs VI to XIII, inclusive, the Commission admits and alleges that, on April 15, 1944, peti-



tioner filed with it the complaint referred to in paragraph IX; that the proceeding thereby instituted was entitled Docket No. 29117, *United States of America v. Aberdeen & Rockfish Railroad Company et al.*; that the defendant carriers filed separate answers, denying generally the allegations of the complaint; that the State Port Authority of Virginia, the Norfolk Port Traffic Commission, the Chamber of Commerce of Baltimore, the Chamber of Commerce and Board of Trade of Philadelphia, the Port of New York Authority and others intervened; that on July 18 and 19, 1944, the proceeding was heard before an examiner at Norfolk, Va.: that at said hearing a large volume of evidence, both oral and documentary, was introduced; that following hearings, an examiner's report, proposing dismissal of the complaint, was issued and served on the parties; 195 that exceptions to said report, and briefs were filed and, on April 5, 1945, the issues were orally argued before Division 2 of the Commission; that on August 3, 1945, the Commission, by Division 2, issued a report and order whereby (as more particularly shown in Appendix II to the petition, p. 29), it found for the complainant and awarded reparation; that, thereafter, on petition of the defendant southern carriers and separate petition by certain defendant trunk lines serving the north Atlantic ports, the proceeding was reopened for re-argument and reconsideration, the effective date of the order being postponed until further order of the Commission; that, on April 3, 1946, the issues in the proceeding were orally argued before the Commission; that, on May 3, 1946, the Commission issued its report and order, referred to in paragraph X of the petition, whereby it reversed the decision of Division 2, vacated the order and dismissed the complaint; that, thereafter, on petition of complainant and petition of one Benjamin J. Brooks, *amicus curiae*, the Commission reopened the proceeding for reargument and reconsideration; that, on November 6, 1946, the issues in the proceeding were orally reargued before the Commission; and that, on July 25, 1947, the Commission issued its report and order, referred to in paragraph XI of the petition, whereby the Commission affirmed the findings in its prior report on reconsideration and ordered the complaint dismissed.

Further answering paragraphs VI to XIII, inclusive, of the petition, the Commission alleges that in said proceedings the parties thereto, including the petitioner herein, were, and each of them was, accorded the full hearing provided for by the Interstate Commerce Act; that in said proceeding

testimony and other evidence bearing upon the matters covered in said report and order were submitted to the Commission for consideration, including testimony and other evidence submitted on behalf of petitioner herein by its counsel; that in said proceedings, both orally and in briefs, questions relating to said matters were fully argued and submitted to the Commission for determination 196 on behalf of said parties by their respective counsel, including many of the particular questions raised by petitioner in this suit, whereupon the Commission determined said matters and entered and served upon the parties to said proceedings, including petitioner herein, its reports and orders on reconsideration of May 3, 1946, and July 25, 1946, annexed to and made a part of the petition as Appendices III, IV and I; that said reports and orders included the Commission's findings of fact, conclusions and requirements in the premises, and that, upon the evidence as aforesaid, and as shown in and by said reports, the Commission made the findings and stated the conclusions upon which its order of July 25, 1947, was based.

The Commission further alleges that the findings and conclusions of said reports were and are, and that each of them was and is, fully supported by the evidence submitted in said proceedings as aforesaid. The Commission further alleges that in making said reports, it considered and weighed carefully, in the light of its own knowledge and experience, each fact, circumstance and condition called to its attention on behalf of the parties to said proceedings and their respective counsel, including many of the matters covered by the allegations of the petition herein.

The Commission further alleges that said reports on reconsideration and said order of July 25, 1947, were not made or entered either arbitrarily or unjustly or contrary to the relevant evidence or without evidence to support them; that in making said order the Commission did not exceed the authority which had been duly conferred upon it, and the Commission denies each and all of the allegations to the contrary contained in the complaint. The Commission denies that its said order is unreasonable, arbitrary, unlawful, or null and void for any of the reasons set forth in said petition, or for any other reason or reasons whatever.

197 Except as herein expressly admitted, the Commission denies the truth of each of and all the allegations contained in the petition, in so far as they conflict either with the allegations herein, or with either the state

ments or conclusions of fact included in said reports on reconsideration and said order of July 25, 1947, referred to and made a part of the petition as Appendices III, IV and I.

All of which matters and things the Commission is ready to aver, maintain, and prove as this Honorable Court shall direct, and hereby prays that said petition be dismissed.

INTERSTATE COMMERCE COMMISSION

By DANIEL W. KNOWLTON,

*Chief Counsel.*

Duly sworn to by Wm. E. Lee jurat omitted in printing  
(All in italics)

Service of the above answer is hereby acknowledged this  
19th day of December, 1947.

DAVID O. MATHEWS

*Counsel for Petitioner, United  
States of America.*

In the District Court of the United States

(Title Omitted)

(File Endorsement Omitted)

198      *Answer of the United States of America—Filed  
Jan. 13, 1948*

Now comes the United States, as a defendant in the above-captioned proceeding, and, in answer to the petition filed therein, says:

## I.

In accordance with a request made by this defendant's War Department, a shipper of freight and user of passenger and other transportation services of certain railroads, The United States of America filed a complaint against those railroads before the Interstate Commerce Commission, as authorized by Section 13 of the Interstate Commerce Act (49 U.S.C. 13). The Commission's order attacked in this case dismissed the complaint before the Commission, and the United States of America, feeling itself aggrieved at the dismissal of its complaint before the Commission, instituted the action before this court to set aside the Commission's order.

## II.

As provided by law (28 U.S.C. Sec. 46; Judicial Code Sec. 208) the United States of America is a defendant in the above-captioned proceeding.



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## III.

The Interstate Commerce Commission is a defendant in this action and it is authorized by law to appear by its own attorneys and to defend its order without regard to the position which the United States, as a statutory defendant, may take in the action. Pursuant to this authority the Interstate Commerce Commission, by its General Counsel, has filed an answer to the petition in this case.

## IV.

Under these circumstances and in view of the fact that the Interstate Commerce Commission is afforded an opportunity to present its views through its own counsel, the United States of America, as a statutory defendant, neither admits nor denies any of the allegations in the petition. See *Interstate Commerce Commission v. City of Jersey City*, 322 U.S. 503, 511 (1944).

JOHN F. SONNETT

*Assistant Attorney General*

JOHN F. BAECHE

*Special Assistant to the Attorney General*

Receipt is hereby acknowledged of a true copy of the foregoing answer in the above-captioned action this thirteenth day of January, 1948.

DANIEL W. KNOWLTON

*Chief Counsel,*

*Interstate Commerce Commission*

GEORGE MORRIS FAY,

*United States Attorney*

200 In the District Court of the United States

(Title Omitted)

(File Endorsement Omitted)

*Motion to Intervene as Defendants—Filed Feb. 2, 1948.*

The Pennsylvania Railroad Company, a corporation, The Virginian Railway Company, a corporation, Southern Railway Company, a corporation, Atlantic Coast Line Railroad Company, a corporation, Seaboard Air Line Railroad Company, a corporation and Norfolk Southern Railway

201 Company, a corporation, pursuant to Rule 24(a) of the Rules of Civil Procedure, move for leave to intervene as defendants in this action in order to assert defenses set forth in the proposed pleading and answer, a copy of which is attached hereto. In support of this motion, the said corporations and each of them allege that:

1. Each of the said corporations, The Pennsylvania Railroad Company, The Virginian Railway Company, Southern Railway Company, Atlantic Coast Line Railroad Company, Seaboard Air Line Railroad Company, and Norfolk Southern Railway Company is a common carrier by rail serving Norfolk, Virginia.

2. Petitioner, the United States of America, prays in its complaint that the order of the Interstate Commerce Commission, entered in the proceeding known as *United States of America v. Aberdeen & Rockfish Railroad Company, et al*, Docket No. 29117, be suspended, enjoined, set aside or annulled.

3. The proceeding before the Interstate Commerce Commission referred to in paragraph 2 hereof was instituted by the petitioner, United States of America, on April 15, 1944 and The Pennsylvania Railroad Company, The Virginian Railway Company, Southern Railway Company, Atlantic Coast Line Railroad Company, Seaboard Air Line Railroad Company and Norfolk Southern Railway Company were named as defendants in said proceeding and each of said corporations was a party in interest in said proceeding.

4. This suit involves the validity of the order of the Interstate Commerce Commission referred to in paragraph 2 hereof, and the interests of The Pennsylvania Railroad Company, The Virginian Railway Company, Southern Railway Company, Atlantic Coast Line Railroad Company, Seaboard Air Line Railroad Company and Norfolk Southern Railway Company may be adversely affected by any order or judgment entered in this action.

202 5. Sections 212 and 213 of the Judicial Code, as amended (28 U. S. C. A. 45 a) confer on The Pennsylvania Railroad Company, The Virginian Railway Company, Southern Railway Company, Atlantic Coast Line Railroad Company, Seaboard Air Line Railroad Company and Norfolk Southern Railway Company an unconditional right to intervene in this action.

WINDSOR F. COUSINS,  
Broad Street Station Building,  
Philadelphia 4, Pennsylvania.

HUGH B. COX,  
Southern Building,  
Washington 5, D. C.,

*Attorneys for The Pennsylvania Railroad Company.*

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*Attorney for Atlantic Coast Line  
 Railroad Company; Seaboard Air  
 Line Railroad Company; Norfolk  
 Southern Railway Company.*

FRED N. OLIVER,  
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*Attorney for The Virginian Railway  
 Company.*

CHARLES CLARK,  
 A. J. DIXON,  
 P. O. Box 1808,  
 Washington, D. C.,  
*Attorneys for Southern Railway  
 Company.*

To:  
 UNITED STATES OF AMERICA,  
*Plaintiff.*

To:  
 UNITED STATES OF AMERICA AND INTERSTATE  
 COMMERCE COMMISSION,  
*Defendants.*

203 Please take notice that the undersigned will  
 bring the above motion for hearing before this Court  
 at a time, day and place set by the Court.

WINDSOR F. COUSINS,  
 HUGH B. COX,  
*Attorneys for The Pennsylvania Rail-  
 road Company.*

CHARLES P. REYNOLDS,  
*Attorney for Atlantic Coast Line Rail-  
 road Company; Seaboard Air Line  
 Railroad Company; Norfolk Southern  
 Railway Company.*

FRED N. OLIVER,  
*Attorney for The Virginian Railway  
 Company.*

CHARLES CLARK,  
 A. J. DIXON,  
*Attorneys for Southern Railway  
 Company.*

Dated: February 2, 1948.



I hereby certify that a copy of the foregoing Motion to Intervene as Defendants and the accompanying Interveners' Answer to Complaint were mailed, postage prepaid, to the Attorney General of the United States, attention of James E. Kilday and David O. Matthews, Special Assistants to the Attorney General (attorneys for the plaintiff, United States of America) United States Department of Justice, Washington 25, D. C.; to Daniel W. Knowlton (attorney for the defendant, Interstate Commerce Commission) Interstate Commerce Commission, Washington 25, D. C.; and to the Attorney General of the United States, attention of John F. Sonnett, Assistant Attorney General (attorneys for the defendant, United States of America) United States Department of Justice, Washington 25, D. C.

HUGH B. COX,  
Southern Building,  
Washington 5, D. C.  
*Attorney for The Pennsylvania  
Railroad Company.*

Dated: February 2, 1948.

In the District Court of the United States  
(Title Omitted)

(File Endorsement Omitted)

205 *Order Granting Leave to Intervene as  
Defendants—Filed March 1, 1948*

This cause was heard on the motion of The Pennsylvania Railroad Company, The Virginian Railway Company, Southern Railway Company, Atlantic Coast Line Railroad Company, Seaboard Air Line Railroad Company, and Norfolk Southern Railway Company, pursuant to Rule 24 (a) of the Rules of Civil Procedure, for leave to intervene as defendants herein and the Court having considered the motion and being advised in the premises, it is

ORDERED that The Pennsylvania Railroad Company, The Virginian Railway Company, Southern Railway Company, Atlantic Coast Line Railroad Company, Seaboard Air Line Railroad Company and Norfolk Southern Railway Company be and they hereby are granted leave to intervene herein as defendants.

(illegible)

*Justice.*

Dated: This 1st day of March, 1948.

In the District Court of the United States

(Title Omitted)

(File Endorsement Omitted)

206 *Interveners' Answer to Complaint--Filed*  
*March 2, 1948.*

Now come The Pennsylvania Railroad Company, The Virginian Railway Company, Southern Railway Company, Atlantic Coast Line Railroad Company, Seaboard Air Line Railroad Company and Norfolk Southern Railway Company, referred to hereafter as the "defendant interveners" and answer the complaint as follows:

### *First Defense*

As a first and complete defense defendant interveners allege that the Court is without jurisdiction because:

1. United States of America is both plaintiff in this action and an indispensable party defendant, the only defendant against whom an action can be instituted to enjoin, set aside, annul or suspend any order of the Interstate Commerce Commission. (Judicial Code, Sections 208, 211, 212 and 213, 28 U. S. C. 45 a, 46, 48).
- 207 2. The Interstate Commerce Commission is an instrumentality and agency of the United States of America and is granted a discretionary right to intervene in suits involving the validity of an order of said Commission, but it is not a necessary or indispensable party to such suit (28 U. S. C. 45 a).
3. The United States of America, or its instrumentality, the Interstate Commerce Commission, are the only parties defendant against whom relief can be obtained in this suit.
4. There is, therefore, no justiciable case or controversy within the meaning of Article III, Section 2 of the Constitution of the United States.

### *Second Defense*

As a second complete defense defendant interveners allege that this Court is without jurisdiction because neither the Urgent Deficiencies Act of October 22, 1913 (38 Stat. 219, 28 U. S. C. 41, 43-48) nor any other statute of the United States gives the United States standing to institute an action to enjoin, set aside, annul or suspend an order of the Interstate Commerce Commission.

*Third Défense*

As a third complete defense defendant interveners allege that this Court is without jurisdiction under the Urgent Deficiencies Act of October 22, 1913 (38 Stat. 219, 28 U. S. C. 41, 43-48) to entertain the complaint because:

1. The complaint seeks only to review an order of the Interstate Commerce Commission denying reparations for past charges, alleged to be unreasonable or unlawful under certain provisions of the Interstate Commerce Act. The said charges alleged to be unlawful or unreasonable were made during the period from June 15, 1942 to June 20, 1946 when the War Department of the United States operated Army Base piers 1 and 2 at Norfolk, Virginia, and said charges were alleged to be unreasonable or unlawful for the reason that during the period in which said piers were operated by the War Department of the United States of America, the War Department performed certain services and furnished a facility for which it was not compensated by the defendant interveners. On or about June 20, 1946 the War Department of the United States of America ceased to operate Army Base piers 1 and 2 and has not operated said piers since that date. The order of the Interstate Commerce Commission which petitioner is seeking to suspend, enjoin, set aside or annul herein, was made and issued on July 25, 1947, and in the "Report of the Commission on Rearrangement" issued on the same date (incorporated as Appendix IV to the complaint) the said Commission found and concluded that "the purpose of this proceeding now is for reparation only."

2. An order of the Interstate Commerce Commission denying reparation for past charges alleged to be unreasonable or unlawful is not reviewable in a court specially constituted under the said Urgent Deficiencies Act.

3. The United States of America having elected and having followed the procedure of bringing its claim for reparations before the Interstate Commerce Commission by complaint is now precluded from resorting to the alternative procedure of an action in a specially constituted District Court of the United States or any other District Court (Interstate Commerce Act §9; 49 U. S. C. 9).



*Fourth Defense.*

Defendant interveners, without waiving the allegations in the First, Second and Third Defenses, answer the specific allegations of the complaint as follows (the paragraphs of this Defense are numbered to correspond with the paragraph numbers in the complaint):

I. Defendant interveners deny that the United States has standing to institute this action as alleged in Paragraph I of the complaint, and they deny that the report of the Interstate Commerce Commission, incorporated by reference as Appendix IV to the complaint, is a true and correct copy of the "Report of the Commission on Reargument" dated July 25, 1947, Docket No. 29417, because the following is omitted after the word "complainant" on page 54, line 17 of the complaint, "At the insistence of complainant".

II. Defendant interveners deny that the Court has jurisdiction as alleged in Paragraph II of the complaint for the reasons set forth in the First, Second and Third Defenses.

III. Defendant interveners admit the allegations of Paragraph III of the complaint.

IV. Defendant interveners admit the allegations of Paragraph IV of the complaint.

V. Defendant interveners deny that they have knowledge or information sufficient to form a belief as to the allegations of Paragraph V of the complaint, except that they admit that the Hampton Roads Port of Embarkation was established to embrace the principal port facilities in the Norfolk area, including Army Base piers 1 and 2, and that effective on June 13, 1942, the lease of Army Base piers 1 and 2 to the Transport Trading and Terminal Corporation was cancelled and thereafter the War Department of the United States of America operated said piers until on or about June 20, 1946.

VI. Defendant interveners deny the allegations in the first sentence of Paragraph VI of the complaint.

VII. Defendant interveners deny the allegations of the first sentence of Paragraph VII of the complaint. Defendant interveners deny the allegation in the last sentence of Paragraph VII of the complaint that they failed or refused to provide wharfage or to perform handling services contemplated by their tariffs.

VIII. Defendant interveners deny each and every allegation in Paragraph VIII of the complaint, except

that defendant interveners admit (1) the allegations of the first sentence of the first paragraph thereof and (2) that prior to 1942, wharfage and handling between cars and ships at Army Base piers 1 and 2 were provided by public terminal operators, and that they were compensated therefor in the amount of four cents per hundred pounds to the extent that they acted as agents for defendant interveners.

In further answer to the allegations in Paragraph VIII of the complaint, defendant interveners allege that on May 1, 1942 the War Department of the United States of America served a written request on defendant interveners, and they allege that on May 22, 1943 a second written request was served on defendant interveners by the War Department; the Court is respectfully referred to each of said requests for the full terms thereof. Defendant interveners allege that each of defendant interveners refused to comply with each said request and at no time during the period in which the War Department operated Army Base piers 1 and 2 did defendant interveners offer to perform or perform the services so requested.

IX. Defendant interveners deny the allegations of the first sentence of the first paragraph of Paragraph IX of the complaint, except that defendant interveners admit that on April 15, 1944 the United States of America filed with the Interstate Commerce Commission a complaint charging violations of Sections 1 (5) (a), 1 (6), 2, 6 (8) and 15 (13) of the Interstate Commerce Act; the Court is respectfully referred to said complaint for the full terms thereof. In answer to the second sentence of the first paragraph of Paragraph IX of the complaint, the defendant interveners deny that the complaint filed with the Interstate Commerce Commission prayed for or requested an order requiring the defendant interveners to render wharfage and handling services at Army Base piers 1 and 2.

X. Defendant interveners admit the allegations of Paragraph X of the complaint.

XI. Defendant interveners admit the allegations of Paragraph XI of the complaint.

XII. Defendant interveners deny the allegations of Paragraph XII of the complaint and deny that the order of the Interstate Commerce Commission is unlawful for any of the reasons therein mentioned or for any other reason.

XIII. Defendant interveners deny the allegations of Paragraph XIII of the complaint.

WHEREFORE, defendant interveners respectfully pray that the complaint be dismissed.

WINDSOR F. COUSINS,  
Broad Street Station Building,  
Philadelphia 4, Pennsylvania.

HUGH B. COX,  
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Washington 5, D. C.,

*Attorneys for The Pennsylvania Railroad Company.*

CHARLES P. REYNOLDS,  
1116 Shoreham Building,  
Washington 5, D. C.,

*Attorney for Atlantic Coast Line Railroad Company; Seaboard Air Line Railroad Company; Norfolk Southern Railway Company.*

FRED N. OLIVER,  
1106 Investment Building,  
Washington 6, D. C.,

*Attorney for The Virginian Railway Company.*

CHARLES CLARK,  
A. J. DIXON,

P. O. Box 1808,  
Washington, D. C.,

*Attorneys for Southern Railway Company.*

Dated: March 2, 1948.

PAUL McARDIE.

In the District Court of the United States  
(Title Omitted)

(File Endorsement Omitted)

*Application for Three-Judge Court—Filed  
April 6, 1948*

Now comes the United States, petitioner in the above-captioned action, and states that:

• 1. This is an action to enjoin, set aside and annul an order of the Interstate Commerce Commission.

2. Under the Urgent Deficiencies Act of October 22, 1913, as amended (38 Stat. 220; 28 U. S. C. 1940 ed. 47), such actions shall be heard and determined by three judges,



of whom at least one shall be a circuit judge, and upon application being presented to a judge he shall immediately call to his assistance, to hear and determine the cause, two other judges; and such hearing and determination shall be given preference and shall be in every way expedited and assigned for a hearing at the earliest practicable day.

Now THEREFORE, petitioner applies to Associate Justice of the District Court of the United States for the District of Columbia, and requests that said Justice immediately call to his assistance the other judges, as provided by law, and requests that the final hearing and determination of the action be expedited.

JAMES E. KILDAY,  
DAVID O. MATHEWS,  
*Special Assistants*  
*to the Attorney General.*

JAMES C. MOORE,  
FRANK F. VESPER,  
*Special Attorneys.*

JOHN F. SONNETT,  
Assistant Attorney General.

GEORGE MORRIS FAY,  
United States Attorney.

215 In the District Court of the United States

(Title Omitted)

(File Endorsement Omitted)

*Order Convening Three Judge Court—Filed*  
*April 12, 1948.*

It appearing that application having been made by petitioner on the 6th day of April, 1948, to convene a three-judge court, and it further appearing that petitioner herein has applied for an order of this court to enjoin and set aside an order of the Interstate Commerce Commission, I hereby call to my assistance Hon. Bennett Champ Clark, Associate Justice of the United States Court of Appeals for the District of Columbia and Hon. Matthew F. McGuire, Associate Justice of the District Court of the United States for the District of Columbia to sit with me as a court of three judges to hear and dispose of the above-entitled cause.

ALEXANDER HOLTZOFF,  
*Associate Justice of the District*  
*Court of the United States for*  
*the District of Columbia.*

Dated: April 12, 1948.

216 District Court of the United States for the  
District of Columbia

UNITED STATES OF AMERICA,

*Plaintiff,*

v.

INTERSTATE COMMERCE COMMISSION and UNITED STATES  
OF AMERICA,

*Defendants.*

(File Endorsement Omitted)

Civil Action No. 4729-47

Before CLARK, Associate Justice, United States Court of Appeals for the District of Columbia; and McGUIRE and HOLTZOFF, Associate Justices, District Court of the United States for the District of Columbia, sitting as a statutory three-judge court.

*Opinion—Filed June 28, 1948*

This is an action brought before a statutory three-judge court to set aside an order of the Interstate Commerce Commission, dismissing a complaint of the United States, by which the United States sought an allowance from certain railroads for wharfage and handling services rendered in connection with shipments made by the  
217 Government during World War II at Norfolk, Virginia. The action is brought under the Urgent Deficiencies Act (U. S. Code, title 28, sec. 41, par. 28, and secs. 43-48) and under Section 9 of the Interstate Commerce Act (U. S. Code, title 49, sec. 9).

For a great many years it had been the general practice of railroads serving North Atlantic ports, including Norfolk, to load and unload from car to pier, and vice versa, traffic brought to the port by rail and intended to be transhipped by vessel. The charges for this service, known as wharfage, were included and absorbed in the railroad traffic rates. At the Port of Norfolk, the cost of this labor to the railroads was four cents per hundred pounds. This sum constituted the compensation paid by the carriers to The Transport Trading and Terminal Corporation, which actually performed this task in their behalf.

During World War II, the War Department shipped a substantial volume of goods from various points in the United States to Norfolk, over the trunk line railroads serving that port, for transportation by vessel to points beyond Norfolk, as well as from points beyond Norfolk to points in the interior. Due to the emergency the Government took over the piers at which these goods were

218 handled, and performed the wharfage services, itself with its own employees. Nevertheless, the railroads persisted in charging and the Government continued to pay the full traffic rate for transportation, which included four cents per hundred pounds as cost of wharfage.

In view of the fact that the Government had performed the service itself, the United States filed a complaint with the Interstate Commerce Commission, praying for reparation at the rate of four cents per hundred pounds on all of the goods that were handled by the Government at Norfolk in the above described manner. The Interstate Commerce Commission dismissed the complaint, on the basis of a finding that the refusal of the railroads to make the allowance to the United States for the wharfage services performed by the Government itself on its own shipments, was not an unsound or unreasonable practice, did not result in unreasonable or inapplicable rates and was not unjustly discriminatory to the United States, *United States v. Aberdeen & Rockfish RR Co.*, 263 I. C. C. 303 and 264 I. C. C. 683. Thereupon the present action was brought to review the decision of the Interstate Commerce Commission and to set aside its order, which had been issued on July 25, 1947.

219 At the outset it becomes necessary to determine whether this action may be maintained. Section 9 of the Interstate Commerce Commission Act (U. S. Code, title 49, sec. 9), provides as follows:

"Any person or persons claiming to be damaged by any common carrier subject to the provisions of this chapter may either make complaint to the commission as hereinafter provided for, or may bring suit in his or their own behalf for the recovery of the damages for which such common carrier may be liable under the provisions of this chapter, in any district court of the United States of competent jurisdiction; but such person or persons shall not have the right to pursue both of said remedies, and must in each case elect which one of the two methods of procedure herein provided for he or they will adopt. \* \* \*

In other words, the law accords two alternative remedies to any person who is damaged by any action of a common carrier violative of the Interstate Commerce Act. The injured party either may make a complaint to the Interstate Commerce Commission or may bring an action for damages against the carrier in the District Court of the United States. The two remedies are mutually exclusive.



In this instance, the United States did not choose to bring suit against the railroads in the District Court of the United States, but elected to present a complaint to the Interstate Commerce Commission. The United States now seeks a review of the adverse decision of the Commission by an action brought before a three-judge court.

The statute regulating actions to review orders of the Interstate Commerce Commission (U. S. Code, title 28, sec. 46) provides, in part, as follows:

"Suits to enjoin, set aside, annul, or suspend any order of the Interstate Commerce Commission shall be brought in the district court against the United States.

\* \* \* \*

An action of this type is a suit against the United States, *United States v. Griffin*, 303 U. S. 226, 238.

In other words, a suit to review an order of the Interstate Commerce Commission must be brought against the United States as the defendant. Accordingly, in this action the United States of America is named both as the petitioner and as the defendant. The Interstate Commerce Commission is added as co-defendant, although there seems to be no warrant in law for this course.<sup>2</sup> We are thus confronted with an anomaly,—a suit by the United States of America against the United States of America.

The United States is not a mere nominal party defendant. The legislative history of the above-mentioned statute demonstrates that the Congress deliberately and intentionally provided that such suits should be brought against the United States and that this requirement was no inadvertence. It was first introduced into the law by the Act which created the Commerce Court (Act of June 18, 1910, Sec. 3., 36 Stat. 539, 542). The provision was debated at length on the floor of each House. These discussions clearly indicated that it was the intention of the authors of the legislation that the Attorney General of the United States should appear in behalf of the United States, and defend the action of the Interstate Com-

<sup>1</sup> Such an action must be heard by a three-judge court, U. S. Code, title 28, sec. 47.

<sup>2</sup> The law authorizes the Commission to intervene in the suit, but does not provide for making the Commission a party defendant originally, U. S. Code, title 28, sec. 45a.

222 merce Commission.<sup>3</sup> Attempts were made to modify this provision in order that the action might be brought against the Interstate Commerce Commission, rather than against the United States, but these endeavors were defeated.

It is clearly, therefore, the duty of the Department of Justice to defend the order of the Interstate Commerce Commission. Necessarily, the Department may not be on both sides of the case. Yet an examination of the petition filed by the United States, and of the answer filed in its behalf, indicates that both pleadings were signed by the same Assistant Attorney General.

No person may sue himself, *Lord v. Veazie*, 8 How. 250; *Cleveland v. Chamberlain*, 66 U. S. 419; *Wood Paper Co. v. Heft*, 8 Wall. 333. This principle is applicable to the United States. The Government may not sue itself. This is true even if the nominal plaintiff is a party who  
223 is subrogated to the rights of the Government, *Globe & Rutgers Fire Ins. Co. v. Hines*, 273 Fed. 774, 777; *Defense Supplies Corp. v. United States Lines Co.*, 148 F. (2d) 311.

In *Globe & Rutgers Fire Ins. Co. v. Hines*, *supra*, the court stated (p. 777):

"It is elementary that the same person cannot be both plaintiff and defendant at the same time in the same action. It is incongruous that the same person should direct and conduct both the prosecution and the defense of the same suit, no matter in what capacity he may appear."

<sup>3</sup> Senator Elihu Root made the following statement on the floor of the Senate (45 Cong. Rec. p. 4104):

"The Attorney General would be bound upon all and the highest considerations of his professional honor and his official duty to defend the order of the Interstate Commerce Commission in all courts having jurisdiction to review it."

Representative Townsend said, on the floor of the House of Representatives (45 Cong. Rec. p. 5525):

"\* \* \* when it (i.e. an order of the Interstate Commerce Commission) is attacked it becomes the duty of the Attorney General to defend."

Senator Sutherland (later Mr. Justice Sutherland) said (45 Cong. Rec. p. 6457):

"The order of the Interstate Commerce Commission is quasi legislative, and, as I have said, it becomes, in substance and effect, the order of the Government of the United States, and it simply occurs to me that it is more fitting that the action to have the order declared invalid as invading the constitutional rights of the railroad company should proceed against the Government of the United States than it is to have it proceed against the Interstate Commerce Commission."

It may be observed in this connection, that the United States of America always acts in a sovereign capacity. It does not have separate governmental and proprietary capacities, *Graves v. N. Y. ex rel. O'Keefe*, 306 U. S. 466, 477.\*

The foregoing rules are but applications of the general doctrine that Federal courts may deal only with actual cases and controversies, *Muskat v. United States*, 219 U. S. 346; *Aetna Life Ins. Co. v. Haworth*, 300 U. S. 227, 239-241. Naturally there cannot be a controversy if the same party is both plaintiff and defendant. If attorneys representing the Department of Justice appear on both sides of the same case, there is no actual controversy, but merely a discussion or debate of a moot question.

It is the view of this court, therefore, that this action may not be maintained, as the United States of America is both plaintiff and defendant. This conclusion is accentuated by the fact that it is the duty of the Department of Justice under the statute to defend the action of the Interstate Commerce Commission.

The cases on which the Government relies are not in point. In *Interstate Commerce Commission v. Meckling*, 330 U. S. 567, 573, the plaintiffs in the action brought before the three-judge court were A. L. Meckling, a water carrier, the Inland Waterways Corporation, and the Secretary of Agriculture. The latter was authorized by a specific statutory provision to seek judicial relief with respect to rates and charges for the transportation of farm products. Consequently, it was not a case in which the United States was both plaintiff and defendant.

In *United States v. Public Utilities Commission*, 151 F. (2d) 609, a direct appeal was taken from an order of an administrative agency. This case, too, did not involve a situation in which the same party, the United States of America, was both plaintiff and defendant.

It is further urged that an order of the Interstate Commerce Commission of the type involved in this case is not reviewable in an action brought before a three-judge statutory court. This position is clearly sustained by *Ashland Coal & Ice Co. v. United States*, 61 F. Supp. 708; affirmed 325 U. S. 840, in which Judge Dobie wrote an exhaustive and persuasive opinion. It is argued, however, that this decision has been, in effect, overruled in *El Dorado*

\* *United States v. Horowitz*, 267 U. S. 458, which holds to the contrary, must be deemed to have been overruled by *Graves v. N. Y. ex rel. O'Keefe* cited in the text.



*Oil Works v. United States*, 328 U. S. 12. The opinion in the *El Dorado* case does not refer to the *Ashland* case. Whether the *Ashland* case must be deemed overruled, need not be decided, in view of the disposition heretofore indicated.

It has been suggested that unless the United States of America may maintain this action, it is without a remedy. This contention is hardly well founded, because the United States has the opportunity of electing the other alternative remedy provided by the statute, namely, to bring suit against the common carriers in the United States District Court. Under any circumstances, this Court must enforce the will of the Congress, which clearly did not contemplate or intend to permit a suit by the United States of America against the United States of America, to review  
226 an order of the Interstate Commerce Commission.

If the situation here presented is a *casus omissus*, the remedy lies solely with the legislative branch of the Government.

In view of the foregoing considerations, we do not reach the merits of the case.

Judgment dismissing the complaint.

BENNETT CHAMP CLARK,  
*Justice.*

MATTHEW F. MCGUIRE,  
*Justice.*

ALEXANDER HOLTZOFF,  
*Justice.*

June 28, 1948.

227

District Court of the United States  
for the District of Columbia  
(File Endorsement  
Omitted)

UNITED STATES OF AMERICA,

*Plaintiff.*

Civil Action No. 4729-47

v.

INTERSTATE COMMERCE COMMISSION and  
UNITED STATES OF AMERICA,

*Defendants.*

*Order Dismissing Complaint—Filed July 26, 1948*

This cause came on for hearing on the answer of the United States, The Interstate Commerce Commission and

the intervening defendants, and the Court having heard the argument of counsel and being fully advised,

IT IS ORDERED that the complaint be and it is hereby dismissed.

Dated July 1, 1948.

BENNETT CHAMP CLARK

*Associate Justice,*

*United States Court of Appeals for  
the District of Columbia.*

ALEXANDER HOLTZOFF

*Associate Justice,*

*District Court of the United States  
for the District of Columbia.*

MATTHEW F. MCGUIRE

*Associate Justice,*

*District Court of the United States  
for the District of Columbia.*

Approved as to form.....

DAVID O. MATHEWS

*Special Assistant to the Attorney General.*

In the District Court of the United States

228

(Title Omitted)

(File Endorsement Omitted)

*Petition for Appeal—Filed Aug. 25, 1948*

The United States of America, plaintiff in the above cause, considering itself aggrieved by the final judgment of this Court entered on the 26th day of July, 1948, does hereby pray an appeal from said final judgment to the Supreme Court of the United States. Pursuant to Rule 12 of the Rules of the Supreme Court the plaintiff presents to this Court herewith a statement showing the basis of jurisdiction of the Supreme Court to entertain an appeal in this cause.

The particulars wherein plaintiff considers the judgment erroneous are set forth in the assignment of errors and prayer for reversal accompanying this petition, to which reference is hereby made.

229 Plaintiff prays that this appeal may be allowed and that citation be issued as provided by law, and that a transcript of the record, proceedings, and documents upon which said judgment was based, duly authenticated,

be sent to the Supreme Court of the United States under the rules of said Court in such cases made and provided.

HERBERT A. BERGSON  
*Assistant Attorney General*

JAMES E. KILDAY  
DAVID O. MATHEWS  
*Special Assistants to the  
Attorney General*

Dated this 25 day of August, 1948.

230 In the District Court of the United States  
(Title Omitted)  
(File Endorsement Omitted)

*Order Allowing Appeal—Filed Aug. 25, 1948*

In the above case the United States of America, plaintiff, having made and filed its petition praying an appeal to the Supreme Court of the United States from the final judgment of this Court entered in this cause on the 26th day of July, 1948, and having also made and filed its petition for appeal, assignment of errors and prayer for reversal, and statement of jurisdiction, and having in all respects conformed to the statutes and rules in such cases made and provided,

IT IS THEREFORE ORDERED AND ADJUDGED  
That the appeal be and the same is hereby allowed as prayed for.

ALEXANDER HOLTZOFF  
*Associate Justice*

Dated this 25th day of August, 1948.

231 In the District Court of the United States  
(Title Omitted)  
(File Endorsement Omitted)

*Assignment of Errors and Prayer for Reversal—  
Filed Aug. 25, 1948.*

The United States of America, plaintiff in the above cause, in connection with its petition for appeal to the Supreme Court of the United States, hereby assigns error to the record and proceedings and to the entry in the district court of final judgment in the above cause on July 26, 1948, and says that in the entry of the final decree the district court committed error to the prejudice of the plaintiff in the following particulars:



The court erred:

1. In holding that Congress, when it enacted the provisions of the Urgent Deficiencies Act which authorize suits in federal district courts to set aside orders of the Interstate Commerce Commission, did not intend to permit the United States to bring such a suit.

2. In holding that this action may not be maintained for the reason that it is a proceeding in which the United States is both plaintiff and defendant.

233 Citation in usual form, filed Aug. 25, 1948 omitted in printing.

238 In the District Court of the United States

(Title Omitted)

(File Endorsement Omitted)

*Praecipe for Record—Filed Aug. 27, 1948*

TO THE CLERK OF THE ABOVE-NAMED COURT:

Please prepare a transcript of the record in the above-captioned cause, to be transmitted to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

1. Petition and appendices attached thereto;  
2. Answer of the Interstate Commerce Commission;  
3. Petition for intervention of The Pennsylvania Railroad Company, The Virginian Railway Company, Southern Railway Company, Atlantic Coast Line Railway Company, Seaboard Air Line Railroad Company and Norfolk Southern Railway Company; and order allowing intervention;

4. Answer of The Pennsylvania Railroad Company, The Virginian Railway Company, Southern Railway Company, Atlantic Coast Line Railway Company, Seaboard Air Line Railroad Company and Norfolk Southern Railway Company, intervening defendants;

239 5. Answer of the United States of America, as statutory defendant;

6. Application for order and order convening three-judge court under provisions of the Urgent Deficiencies Act of October 22, 1913;

7. Opinion of the Court filed on June 28, 1948;

8. Judgment of the Court entered on July 26, 1948;

9. Petition for appeal, order allowing appeal, assignment of errors and prayer for reversal, statement as to

jurisdiction, citation, and statement calling attention to the provisions of Supreme Court Rule 12(3), and proof of service thereof;

10. This praecipe and proof of service thereof.

HERBERT A. BERGSON  
*Assistant Attorney General*

JAMES E. KILDAY  
DAVID O. MATHEWS  
*Special Assistant to the  
Attorney General*

Dated August 26, 1948.

240

*Proof of Service*

Service of the praecipe is accepted and copies received this 26 day of August, 1948.

DANIEL W. KNOWLTON  
*Chief Counsel,  
Interstate Commerce Commission.*

HUGH B. COX  
*Counsel for The Pennsylvania  
Railroad Company.*

CHAS. P. REYNOLDS  
*Counsel for Atlantic Coast Line  
Railway Company; Seaboard Air  
Line Railroad Company; Norfolk  
Southern Railway Company.*

241

MARTIN A. MEYER, JR.  
*Counsel for The Virginian Railway  
Company.*

CHARLES CLARK  
A. J. DIXON  
*Counsel for Southern Railway  
Company.*

244

In the District Court of the United States  
(Title Omitted)

(File Endorsement Omitted)

*Counter Praecipe—Filed Sept. 3, 1948*

TO THE CLERK OF THE UNITED STATES DISTRICT COURT:  
The defendant, the Interstate Commerce Commission, designates the following additional matters to be included in the transcript of the record on appeal:

1. The following pages of the transcript of hearing on May 5, 1948, before the District Court: page 5, beginning with the word "Statement" in line 8 and ending with the end of the page; and page 7, beginning with the word "Opening" in line 2 and ending with the word "objection" in line 11.

2. The certified copy of the entire record made in the proceeding before the Interstate Commerce Commission entitled, *United States v. Aberdeen & Rockfish Railroad Co. et al.*, Docket No. 29,117, filed in this cause on 245 May 5, 1948; said certified copy consisting of four volumes or parts.

3. This praecipe.

DANIEL W. KNOWLTON,  
*Chief Counsel,*  
*Interstate Commerce Commission.*

September 3, 1948.

I, Daniel W. Knowlton, certify that copies of the foregoing Counter Praecipe were this day mailed to the following persons:

DAVID O. MATHEWS, Esq.,  
*Special Assistant to the Attorney General*  
*for petitioner, United States of America.*

HERBERT A. BERGSON, Esq.,  
*Assistant Attorney General for Defendant,*  
*United States of America.*

HUGH B. COX, Esq.,  
 Southern Building,  
 Washington 5, D. C.  
*Attorney for The Pennsylvania Railroad*  
*Company.*

CHARLES P. REYNOLDS, Esq.,  
 1110 Shoreham Building,  
 Washington 5, D. C.  
*Attorney for Atlantic Coast Line Railroad*  
*Co.; Seaboard Air Line Railroad Co.;*  
*Norfolk Southern Railway Company.*

246 FRED N. OLIVER, Esq.,  
 1106 Investment Building,  
 Washington 6, D. C.,  
*Attorney for The Virginian Railway*  
*Company.*



CHARLES CLARK, ESQ.,  
A. J. DIXON, P. O. Box 1808,  
Washington, D. C.,  
*Attorneys for the Southern Railway  
Company.*

DANIEL W. KNOWLTON,  
*Chief Counsel,*  
*Interstate Commerce Commission.*

This 3d day of September, 1948.

247 In the District Court of the United States  
(Title Omitted)  
(File Endorsement Omitted)

*Counter Praecipe—Filed Sept. 4, 1948*

TO THE CLERK OF THE UNITED STATES DISTRICT COURT:

The Interveners, The Pennsylvania Railroad Company, The Virginian Railway Company, Southern Railway Company, Atlantic Coast Line Railroad Company, Seaboard Air Line Railroad Company, and Norfolk Southern Railway Company designate the following additional matters to be included in the transcript of the record on appeal:

1. The following pages of the transcript of hearing on May 5, 1948, before the District Court: page 5, beginning with the word "Statement" in line 8 and ending with the end of the page; and page 7, beginning with the word "Opening" in line 2 and ending with the word "objection" in line 11.

2. The certified copy of the entire record made in the proceeding before the Interstate Commerce Commission entitled, United States v. Aberdeen & Rockfish Railroad Co. *et al*, Docket No. 29,117, filed in this cause on May 5, 1948, said certified copy consisting of four volumes or parts.

3. This praecipe.

WINDSOR F. COUSINS,  
Broad Street Station Building,  
Philadelphia 4, Pennsylvania.

HUGH B. COX,  
Southern Building,  
Washington 5, D. C.,  
*Attorney for The Pennsylvania  
Railroad Company.*

CHAS. P. REYNOLDS,  
1110 Shoreham Building,  
Washington 5, D. C.,  
*Attorney for Atlantic Coast Line  
Railroad Company; Seaboard Air  
Line Railroad Company; Norfolk  
Southern Railway Company.*

FRED N. OLIVER,  
1106 Investment Building,  
Washington 6, D. C.,  
*Attorney for The Virginian Railway  
Company.*

CHARLES CLARK.  
A. J. DIXON;  
P. O. Box 1808,  
Washington, D. C.,  
*Attorneys for the Southern Railway  
Company.*

Dated: September 3, 1948.

249

*Proof of Service*

Service of the Interveners' Counter Praecipe is accepted and copies thereof received this 3rd day of September, 1948.

DAVID O. MATHEWS,  
*Attorney for Petitioner,  
United States of America.*

(Illegible)

*Assistant to Attorney General  
Attorneys for Defendant,  
United States of America.*

DANIEL W. KNOWLTON,  
*Chief Counsel,  
Interstate Commerce Commission.*

250

In the District Court of the United States

(Title Omitted)

(File Endorsement Omitted)

*Amended Praecipe—Filed Sept. 8, 1948*

TO THE CLERK OF THE ABOVE-NAMED COURT:

Please prepare a transcript of the record in the above-captioned cause, to be transmitted to the Clerk of the

Supreme Court of the United States, and include in said transcript the following:

1. Petition and appendices attached thereto;
2. Answer of the Interstate Commerce Commission;
3. Petition for intervention of The Pennsylvania Railroad Company, The Virginian Railway Company, Southern Railway Company, Atlantic Coast Line Railway Company, Seaboard Air Line Railroad Company and Norfolk Southern Railway Company, and order allowing intervention;

4. Answer of The Pennsylvania Railroad Company, The Virginian Railway Company, Southern Railway Company, Atlantic Coast Line Railway Company, Seaboard Air Line Railroad Company and Norfolk Southern Railway Company, intervening defendants;

251 5. Answer of the United States of America, as statutory defendant;

6. Application for order and order convening three-judge court under provisions of the Urgent Deficiencies Act of October 22, 1913;

7. Transcript of hearing on May 5, 1948 before the District Court;

8. Opinion of the Court filed on June 28, 1948;

9. Judgment of the Court entered on July 26, 1948;

10. Petition for appeal, order allowing appeal, assignment of errors and prayer for reversal, statement as to jurisdiction, citation, and statement calling attention to the provisions of Supreme Court Rule 12(3), and proof of service thereof;

11. Praecipe for preparation of transcript of record and proof of service thereof;

12. This amended praecipe and proof of service thereof.

HERBERT A. BERGSON  
*Assistant Attorney General*

JAMES E. KILDAY

DAVID O. MATHEWS

*Special Assistants to the Attorney General*

Dated September 8th, 1948.

252

*Proof of Service*

Service of the amended praecipe is accepted and copies received this day of September, 1948.

DANIEL W. KNOWLTON,

*Chief Counsel,*

*Interstate Commerce Commission.*



HUGH B. COX,  
*Counsel for The Pennsylvania  
 Railroad Company.*

CHAS. P. REYNOLDS,  
*Counsel for Atlantic Coast Line  
 Railway Company; Seaboard Air  
 Line Railroad Company, Norfolk  
 Southern Railway Company.*

253 FRED N. OLIVER,  
*Counsel for The Virginian Railway  
 Company.*

CHARLES CLARK,  
 By L. L. OLIVER,  
*Counsel for Southern Railway  
 Company.*

251 In the District Court of the United States  
 (Title Omitted)

(File Endorsement Omitted)

*Order for Transmission of Original Copy of the  
 Certified Transcript of Proceedings Before  
 the Interstate Commerce Commission in  
 Lieu of a Photostat Thereof—Filed  
 Sept. 10, 1948*

Upon the application of the defendant, the Interstate Commerce Commission, it is by this Court this 9th of September, 1948,

ORDERED, that the certified copy of the entire record in the proceeding before the Interstate Commerce Commission, entitled United States of America v. Aberdeen & Rockfish Railroad Company *et al.*, Docket No. 29117, filed in this cause on May 5, 1948, said certified copy consisting of four volumes or parts, be forwarded to the United States Supreme Court for use in connection with the appeal to said Court, in lieu of a photostatic copy thereof.

255

BENNETT CHAMP CLARK.

Dated this 9th day of September, 1948.

Consented to:

DAVID O. MATHEWS,

*Special Assistant to the Attorney General,  
 for petitioner, United States of America.*

HERBERT A. BERGSON,  
*Assistant Attorney General,  
 for defendant, United States of America.*

HUGH B. COX,  
*Attorney on behalf of all interveners.*

DANIEL W. KNOWLTON,  
*Chief Counsel, Interstate Commerce  
 Commission, for defendant, Interstate  
 Commerce Commission.*

256 United States District Court  
 For the District of Columbia

Clerk's Certificate to foregoing transcript omitted in  
 printing.

258 BEFORE THE  
 INTERSTATE COMMERCE COMMISSION

I. C. C. DOCKET No. 29117  
 UNITED STATES OF AMERICA, COMPLAINANT

v.

ABERDEEN AND ROCKFISH RAILROAD COMPANY, ET AL.,  
 DEFENDANTS

*Complaint—Filed April 15, 1944*

The United States of America, by its attorneys, acting under direction of the Attorney General of the United States, for cause of complaint against the persons named in Appendix "A," which is attached hereto and made a part hereof as if fully set out herein, respectfully shows:

# I

That each of the defendants named in Appendix "A" is a common carrier by railroad engaged in the transportation of property in interstate or foreign commerce and as such is subject to the provisions of the Interstate Commerce Act.

# II

259 That the War Department, one of the executive departments of the Government of the United States, in the performance of its functions and in the prosecution of the war, has shipped, is presently shipping

and expects to continue to ship over the lines of the defendants a substantial volume of goods from various points in the United States to Norfolk, Virginia, for export by vessel to foreign countries, and has shipped, is presently shipping and expects to continue to ship over the lines of the defendants from Norfolk, Virginia, to various points throughout the United States a substantial volume of goods which have been imported by vessel from foreign countries. Such goods consist of so many different items that it is impracticable to list them in this complaint. The transportation charges on such shipments have been, are, and will continue to be paid or borne by the complainant.

### III

That defendants have published and presently maintain class and commodity rates which apply to or from Norfolk, Virginia, on export, import, intercoastal and coastwise traffic, which originates at or is destined to points throughout the United States. The rates and charges maintained by the defendants on such traffic and the tariffs containing such rates and charges are too numerous to be set out in full herein, and for that reason complainant only refers to a few representative tariffs, to wit:

- Central Freight Association Freight Tariff No. 490-B, Agent B. T. Jones' I. C. C. No. 3642.
- 260 Central Freight Association Freight Tariff No. 218-N, Agent B. T. Jones' I. C. C. No. 3758.
- Southern Freight Tariff Bureau Freight Tariff No. 705-F, Agent R. H. Hoke's I. C. C. No. 903.
- Western Trunk Lines' Freight Tariff 329-H, Agent L. E. Kipp's I. C. C. No. A-3475.
- Trunk Line Tariff Bureau Freight Tariff 107-C, Agent W. S. Curlett's I. C. C. No. A-767.

### IV

That the rates maintained by the defendants and published in the tariffs referred to in paragraph III above on export, import, intercoastal, and coastwise traffic, except certain traffic from or to points in Southern territory, are applicable to or from shipside at Norfolk, Virginia, either by specific designation in the rate tariffs or by the application of terminal tariffs published and maintained by the defendants. The terminal tariffs provide generally for the absorption of wharfage and handling charges for services incident to effecting receipt or delivery of freight at shipside on traffic which originates at or is destined to



points in so-called "absorption territory," which, as defined in the said tariffs, embraces generally all points in the United States with the exception of certain points in Southern territory. The terminal tariffs containing the said absorption provisions are:

- Atlantic Coast Line Railroad Company Tariff No. 91-2A, I. C. C. No. B-3068.
- 261 Norfolk and Western Railway Company Tariff GF No. 23F, I. C. C. No. 9179.
- Norfolk Southern Railway Company Tariff FTD 338, I. C. C. No. A-1148.
- Pennsylvania Railroad Company Tariff No. 1378 II, I. C. C. No. 2613.
- Seaboard Air Line Railway Company Tariff No. 34-E, I. C. C. No. A-8079.
- Southern Railway Company Port Charges Tariff No. 10, I. C. C. No. A-11613.
- Virginian Railway Company Tariff No. 1813-K, I. C. C. No. 2196.

The absorption provisions published and maintained by the defendants in the tariffs referred to in this paragraph have been since June 15, 1942, and now are applicable generally on export, import, intercoastal and coastwise traffic handled over certain facilities located at Norfolk, Virginia, including those of Lincoln Tidewater Terminals, Incorporated, Lambert's Point Docks, Incorporated (Lambert Point Division), and the Transport, Trading and Terminal Corporation, except that the absorption provisions published and maintained by defendant Norfolk and Western Railway Company have not applied and presently do not apply on traffic handled over the last named facility.

## V

That the defendants, by the provisions of tariffs referred to in paragraph IV above and the Norfolk and Portsmouth Belt Line Railroad Company Tariff 6-J, I. C. C. No. 105, provides generally for an allowance to the operators

262 of said terminal facilities at Norfolk, Virginia, including the Transport, Trading and Terminal Corporation, the Lincoln Tidewater Terminals, Incorporated, and Lambert's Point Docks, Incorporated, of one cent per 100 pounds wharfage and three cents per 100 pounds handling for furnishing the facilities and performing the services on shipments of export, import, intercoastal, and coastwise traffic handled at those terminal facilities. Lincoln Tidewater Terminals, Incorporated, operates United

Nations' Depot No. 9 under an operating contract with the Army Air Corps. The traffic handled consists principally of Army Air Corps and lend-lease material. Under the terms of the said contract Lincoln Tidewater Terminals, Incorporated, as contractor, furnishes the supervision and management of the operations of the terminal facilities and collects and accounts for all charges imposed by the Government upon the use of the facilities.

## VI

That prior to June 15, 1942, the Transport, Trading and Terminal Corporation had been operating the facilities, identified as Army Base Piers Nos. 1 and 2, under a lease from the United States Maritime Commission. It was the practice and custom of the defendants to utilize the facilities and services of the Transport, Trading and Terminal Corporation for the loading and unloading of water-borne traffic moving over the aforesaid piers and to pay it as such terminal operator the sum of one cent per 100 pounds 263 wharfage and three cents per 100 pounds for handling services. On June 15, 1942, because of war-time requirements and the increased volume of military and related traffic requiring precedence, the War Department assumed the control and operation of the said facilities. They have been and are available and are used for the handling of traffic of the United States of America and, subject to priorities for military requirements, of private shippers. The operations conducted by the War Department at these facilities have been and are substantially the same as the operations previously conducted by the Transport, Trading and Terminal Corporation.

## VII

That military demands require, and the defendants herein are under a duty to provide, that military traffic be given precedence and that it be handled at the largest and best equipped water terminals, with due regard to berthing space, the proximity to the piers of adequate warehousing facilities, sources of labor supply, military security, and flexibility to meet the contingency of unforeseen changes in planned schedules.

## VIII —

That for much of the period since June 15, 1942, the terminal facilities at Norfolk, Virginia, exclusive of Army Base Piers Nos. 1 and 2, have been and they now are incapable of handling the increased volume of War Depart-

ment and other governmental and commercial water-borne traffic that has been and is being moved over Army Base Piers Nos. 1 and 2. The defendants do not themselves operate terminal facilities for handling general cargo at Norfolk, and could not have handled over pier facilities at Norfolk other than Army Base Piers Nos. 1 and 2 any substantial part of the traffic that has moved over said Army piers since June 15, 1942. They were not and are not now in a position to fulfill their transportation obligations with respect to handling and wharfage to and from shipside on the above-described traffic moving over Army Base Piers Nos. 1 and 2.

### IX

That since the assumption by the War Department of the control and operation of the terminal facilities identified as Army Base Piers Nos. 1 and 2, the defendants, though often requested and subjected to demands by the War Department, have nevertheless failed, neglected and refused, and still fail, neglect and refuse, to furnish the facilities and perform the services required and necessary to effect the shipside delivery or receipt at those facilities of shipments of export or import traffic which are transported under rates that specifically include shipside delivery or receipt or which originate at or are destined to points in so-called "absorption territory," as described in paragraph IV hereof; or in lieu thereof, to grant complainant an allowance for wharfage and handling; or to amend their terminal tariffs to designate the United States as the recipient of the allowances made to the former operator of the said piers; or, in the alternative, to publish separate charges for wharfage and handling, with a corresponding reduction in the line-haul rates. The War Department, by reason of the failure, neglect, and refusal of the defendants to furnish the facilities and perform the services on said traffic at these piers, or to make an allowance therefor, has been and is presently compelled and required to furnish the facilities and perform the services at the expense of the United States for such War Department and other governmental and commercial water-borne traffic, notwithstanding the defendants' obligation therefor under the applicable published line-haul rates.

### X

That for many years it has been the general practice and custom of the defendants, as reflected in existing tariff provisions now maintained by them, to furnish the facil-



ities and perform the services necessary to effect shipside delivery or receipt at Norfolk, Virginia, and other North Atlantic ports under their line-haul rates on shipments of export, import, intercoastal, and coastwise traffic; or to compensate the terminal operators who furnish the facilities and perform the services. No adjustment was made in the line-haul rates applicable to and from Norfolk, Virginia, at the time when the control and operation of the facilities of Transport, Trading and Terminal Corporation were assumed by the War Department on June 15, 1942, nor has any such adjustment since been made.

## XI

266 That the failure, neglect and refusal of the defendants to furnish the facilities and perform the services at the Army Base Piers Nos. 1 and 2, or to compensate the United States of America by means of an allowance for furnishing the facilities and performing the services is a departure from the general practice and custom of the defendants, and in violation of the provisions of applicable tariffs. Accordingly, the United States of America has been and is being required to pay transportation charges on the basis of rates which provide for such services and, at the same time, to furnish the facilities and perform the services at its own expense. Such requirements were and are not imposed upon other shippers of like traffic which is handled over the United Nations Depot No. 9, the facilities of the Lambert's Point Docks, Incorporated, and other terminals located at Norfolk, Virginia, and other North Atlantic ports. By means of said requirements complainant has been subjected to greater charges than are demanded from other shippers for like services in the transportation of like traffic under similar conditions. The United States of America has been and is being compelled to furnish the facilities and perform the services for both governmental and commercial water-borne traffic moving over Army Base Piers Nos. 1 and 2 at its own expense without any allowances therefor from the defendants.

## XII

267 That the War Department has attempted to obtain a voluntary and satisfactory adjustment by the defendants of the matters concerning which complaint is made herein, but such efforts have not been successful and defendants have failed and refused to make any adjustment.

Gulf Coast Lines, comprising the following carriers:

The Beaumont, Sour Lake & Western Railway Company (Guy A. Thompson, Trustee);

Brownsville & Matamoros Bridge Company;

New Iberia & Northern Railroad Company (Guy A. Thompson, Trustee);

276 New Orleans, Texas & Mexico Railway Company (Guy A. Thompson, Trustee);

The Orange & Northwestern Railroad Company (Guy A. Thompson, Trustee);

The St. Louis, Brownsville and Mexico Railway Company (Guy A. Thompson, Trustee);

Gulf, Colorado and Santa Fe Railway Company;

Gulf, Mobile and Ohio Railroad Company;

Hampton & Branchville Railroad Company;

Helena Southwestern Railroad Company;

High Point, Randleman, Asheboro and Southern Railroad Company;

High Point, Thomasville & Denton Railroad Company;

Houston and Brazos Valley Railway Company (Guy A. Thompson, Trustee);

Illinois Central Railroad Company;

Illinois Terminal Railroad Company;

Indiana Harbor Belt Railroad Company;

International-Great Northern Railroad Company (Guy A. Thompson, Trustee);

Interstate Railroad Company;

The Ironton Railroad Company (Lehigh Valley Railroad Company and Reading Company, Lessees);

Jacksonville, Gainesville & Gulf Railway;

Jamestown, Westfield and Northwestern Railroad Company;

The Joplin-Pittsburg Railroad Company;

Kansas City, Kaw Valley Railroad, Inc.;

The Kansas City Southern Railway Company;

Kansas, Oklahoma & Gulf Railway Company;

Kewaunee, Green Bay and Western Railroad Company;

Lackawanna and Wyoming Valley Railroad Company;

Lake Erie, Franklin & Clarion Railroad Company;

The Lakeside and Marblehead Railroad Company;

Lake Superior & Ishpeming Railroad Company;

277 Lancaster and Chester Railway Company;

Laurinburg and Southern Railroad Company;

The Lehigh and Hudson River Railway Company;

Lehigh and New England Railroad Company;

Lehigh Valley Railroad Company;

Litchfield and Madison Railway Company;

Live Oak, Perry & Gulf Railroad Company;  
 The Long Island Rail Road Company;  
 The Lorain & West Virginia Railway Company;  
 Louisiana & Arkansas Railway Company;  
 The Louisiana and North West Railroad Company;  
 Louisville and Nashville Railroad Company;  
 Macon, Dublin & Savannah Railroad Company;  
 Maine Central Railroad Company;  
 Manistee and Northeastern Railway Company;  
 Manistique and Lake Superior Railroad Company;  
 The Mansfield Railway & Transportation Company;  
 Marinette, Tomahawk & Western Railroad Company;  
 Maryland and Pennsylvania Railroad Company;  
 McCloud River Railroad Company;  
 Meridian and Bigbee River Railway Company (J. G. Floyd,  
 Trustee);  
 Middletown and Unionville Railroad Company;  
 Midland Continental Railroad;  
 Midland Valley Railroad Company;  
 The Milwaukee Electric Railway & Transport Company;  
 Mineral Range Railroad Company (Edward A. Whitman  
 & P. L. Solether, Trustees);  
 The Minneapolis & St. Louis Railroad Corporation;  
 The Minneapolis & St. Louis Railway Company;  
 Minneapolis, Northfield and Southern Railway;  
 Minneapolis, St. Paul & Sault Ste. Marie Railway Com-  
 pany (G. W. Webster and Joseph Chapman, Trustees);  
 Minnesota, Dakota & Western Railway Company;  
 278 Minnesota Western Railway Company;  
 Mississippi Central Railroad Company;  
 Mississippi Export Railroad Company;  
 Missouri and Arkansas Railway Company;  
 Missouri-Illinois Railroad Company (Guy A. Thompson,  
 Trustee);  
 Missouri-Kansas-Texas Railroad Company;  
 Missouri-Kansas-Texas Railroad Company of Texas;  
 Missouri Pacific Railroad Company (Guy A. Thompson,  
 Trustee);  
 Missouri Pacific Railroad Corporation in Nebraska (Guy  
 A. Thompson, Trustee);  
 The Mobile & Gulf Railroad Company;  
 The Monongahela Railway Company;  
 Montour Railroad Company;  
 Montpelier and Wells River Railroad;  
 Morristown & Erie Railroad Company;  
 Murfreesboro-Nashville Railway Company (V. B. Lewis,  
 Receiver);



## XIII

That by reason of the facts stated in the foregoing paragraphs, the United States of America has been, is, and will be subjected to the payment of rates and charges for transportation which were when exacted, still are, and will continue to be unjust and unreasonable in violation of section 1 (5) (a) and section 1 (6) of the Interstate Commerce Act; and unjustly discriminatory in violation of section 2 of the Interstate Commerce Act; and unduly prejudicial to military traffic and not in full compliance with section 6 (8) of the Interstate Commerce Act; and excessive and without any allowance to the owner for the use of its instrumentalities in transportation and for its rendition of services connected with transportation, in violation of section 15 (13) of the Interstate Commerce Act.

## XIV

That complainant has been injured thereby to its damage in a sum of money the exact amount of which is not presently ascertainable.

Wherefore, complainant prays that defendants, and each of them, be required to answer the charges herein; and that after due hearing and investigation the Commission:

(a) issue an order commanding the defendants, and each of them,

268 (1) to cease and desist from the aforesaid violations of said act;

(2) to establish and pay in the future to the complainant an allowance for wharfage and handling in such amount as the Commission shall deem to be just and reasonable compensation for furnishing the facilities and performing the services at Army Base Piers Nos. 1 and 2 on shipments of export, import, intercoastal and coastwise traffic transported under rates which include such services, either by specific designation as "ship-side" rates or by the application of the absorption provisions published in the terminal tariffs referred to in paragraph IV hereof; or, in the alternative, to establish and apply in the future separate wharfage and terminal charges for the services at Norfolk, Virginia, and corresponding reductions in the existing line-haul rates applicable on export, import, intercoastal, and coastwise traffic to and from Norfolk, Virginia; and

(3) to pay to complainant by way of reparation for the unlawful charges hereinbefore alleged and for fur-

nishing the facilities and performing the terminal services for defendants on past shipments and shipments during the pendency of this proceeding of export, import, intercoastal and coastwise traffic handled over Army Base Piers Nos. 1 and 2 in such amount, with interest thereon, as in view of the evidence to be adduced herein the Commission shall determine complainant is entitled to receive as an award of damages under the provisions of the Interstate Commerce Act on account of the violations thereof by the defendants.

269. (b) issue such other and further order or orders as the Commission may consider proper in the premises.

Dated at Washington, D. C., April 14, 1944.

FRANCIS M. SHEA,  
*Assistant Attorney General.*

COUNTY OF ARLINGTON, }  
State of Virginia. } ss.

Colonel Luke W. Finlay, being duly sworn, deposes and says:

That he is the Executive Officer to the Chief of Transportation, Headquarters, Army Service Forces; that he has read the foregoing complaint and knows the contents thereof; that the same are true as stated except as to matters and things, if any, stated to be on information and belief, and as to those matters and things, he believes them to be true.

Deponent further says that the reason why this verification is made by the deponent and not by the complainant is because the complainant is a sovereign power.

LUKE W. FINLAY,  
*Colonel, Transportation Corps.*

Subscribed in my presence, and sworn to before me by the deponent above named this 14th day of April 1944.

CLIFFORD STARR,  
*Colonel, Transportation Corps,*  
*Summary Court.*

270

### Appendix A

#### LIST OF DEFENDANTS

Aberdeen and Rockfish Railroad Company;  
Abilene & Southern Railway Company;

- The Ahnapsee and Western Railway Company;
- The Akron, Canton & Youngstown Railroad Company;
- The Alabama Great Southern Railroad Company;
- Alabama, Tennessee & Northern Railroad Corporation  
(John T. Cochrane, Jr., Trustee);
- Albany and Northern Railway Company;
- Algiers, Winslow and Western Railway Company;
- Alton and Southern Railroad;
- The Alton Railroad Company (Henry A. Gardner,  
Trustee);
- Angelina & Neches River Railroad Company;
- The Ann Arbor Railroad Company;
- Apalachicola Northern Railroad Company;
- Arcade and Attica Railroad Corporation;
- Arkansas & Louisiana Missouri Railway Company;
- The Arkansas Western Railway Company;
- Aroostook Valley Railroad Company;
- Ashley, Drew & Northern Railway Company;
- The Atchison, Topeka and Santa Fe Railway Company;
- Atlanta & Saint Andrews Bay Railway Company;
- Atlanta and West Point Rail Road Company;
- Atlanta, Birmingham and Coast Railroad Company;
- The Atlantic and East Carolina Railway Company;
- Atlantic and Western Railway Company;
- Atlantic and Yadkin Railway Company;
- 271 Atlantic Coast Line Railroad Company;
- The Baltimore and Annapolis Railroad Company;
- Baltimore and Eastern Railroad Company;
- The Baltimore and Ohio Chicago Terminal Railroad Com-  
pany;
- The Baltimore and Ohio Railroad Company;
- Bamberger Railroad Company;
- Bangor and Aroostook Railroad Company;
- Bauxite & Northern Railway Company;
- Bay Point and Clayton Railroad Company;
- The Beaumont, Sour Lake & Western Railway Company  
(Guy A. Thompson, Trustee);
- Beaver, Meade and Englewood Railroad Company;
- The Belt Railway Company of Chicago;
- Bennettsville and Cheraw Railroad Company;
- Bessemer and Lake Erie Railroad Company;
- Bingham and Garfield Railway Company;
- Blue Ridge Railway Company;
- Bonhomie and Hattiesburg Southern Railroad Company;
- Boston and Maine Railroad;
- Buffalo, Union-Carolina Railroad;



- Burlington-Rock Island Railroad Company;
- Butte, Anaconda & Pacific Railway Company;
- Cadiz Railroad Company;
- California Western Railroad & Navigation Company;
- Camas Prairie Railroad Company;
- Cambria and Indiana Railroad Company;
- Canton & Carthage Railroad Company;
- Cape Fear Railways, Inc.;
- Carolina and Northwestern Railway Company;
- Carolina, Clinchfield and Ohio Railway;
- Carolina, Clinchfield and Ohio Railway of South Carolina
- Lessees:
  - Atlantic Coast Line Railroad Company;
  - 272 Louisville and Nashville Railroad Company;
  - Cedar Rapids and Iowa City Railway;
  - Central California Traction Company;
  - Central Indiana Railway Company;
  - Central of Georgia Railway Company (M. P. Callaway, Trustee);
  - The Central Railroad Company of New Jersey, (Shelton Pitney and Walter P. Gardner, Trustees);
  - Central Vermont Railway, Inc.;
  - Charles City Western Railway Company;
  - Charleston & Western Carolina Railway Company;
  - Chattahoochee Valley Railway Company;
  - The Chesapeake and Ohio Railway Company;
  - Chesapeake Western Railway;
  - Chestnut Ridge Railway Company;
  - Cheswick and Harmar Railroad Company;
  - Chicago & Eastern Illinois Railroad Company;
  - Chicago & Illinois Midland Railway Company;
  - Chicago & Illinois Western Railroad;
  - Chicago and North Western Railway Company (Claude A. Roth, Trustee);
  - Chicago, Attica & Southern Railroad Company (William Fabrikant, Agent);
  - Chicago, Aurora and Elgin Railroad Company (A. A. Sprague and Bernard J. Fallon, Receivers);
  - Chicago, Burlington & Quincy Railroad Company;
  - Chicago Great Western Railway Company;
  - Chicago, Indianapolis and Louisville Railway Company (L. E. DeRamus and Holman D. Pettibone, Trustees);
  - Chicago, Milwaukee, St. Paul and Pacific Railroad Company (Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees);

- Chicago, North Shore and Milwaukee Railroad Company  
(John B. Gallagher and Edward J. Quinn, Trustees);
- 273 The Chicago River and Indiana Railroad Company;  
The Chicago, Rock Island and Pacific Railway Com-  
pany (Aaron Colton and Joseph B. Fleming, Trustees);  
Chicago, Saint Paul, Minneapolis and Omaha Railway  
Company;
- Chicago South Shore and South Bend Railroad;  
Chicago, West Pullman & Southern Railroad Company;
- The Cincinnati, New Orleans and Texas Pacific Railway  
Company;
- The Colorado and Southeastern Railroad Company;  
The Colorado and Southern Railway Company;
- The Colorado & Wyoming Railway Company;  
Columbia, Newberry and Laurens Railroad Company;  
Columbus and Greenville Railway Company;  
Copper Range Railroad Company;
- Cornwall Railroad Company;
- Coudersport and Port Allegany Railroad Company;
- Cowlitz, Chehalis & Cascade Railway;
- Cumberland and Pennsylvania Railroad Company;
- Danville and Western Railway Company;
- The Delaware and Hudson Railroad Corporation;
- The Delaware, Lackawanna and Western Railroad Com-  
pany;
- The Denver and Rio Grande Western Railroad Company  
(Wilson McCarthy and Henry Swan, Trustees);
- The Denver and Salt Lake Railway Company;
- DeQueen and Eastern Railroad Company;
- Des Moines & Central Iowa Railroad;
- Detroit and Mackinac Railway Company;
- The Detroit and Toledo Shore Line Railroad Com-  
pany;
- 274 Detroit, Caro and Sandusky Railway Company;  
Detroit, Toledo and Ironton Railroad Company;
- Doniphan, Kensett & Searcy Railway;
- Duluth & Northeastern Railroad Company;
- Duluth, Missabe and Iron Range Railway Company;
- The Duluth, South Shore and Atlantic Railway Company  
(Edward A. Whitman and P. L. Solether, Trustees);
- Duluth, Winnipeg and Pacific Railway Company;
- Durham and Southern Railway Company;
- Eastland, Wichita Falls & Gulf Railroad Company;
- East St. Louis Junction Railroad Company;
- Elgin, Joliet and Eastern Railway Company;
- Erie Railroad Company;

Escanaba and Lake Superior Railroad Company;  
 Fernwood, Columbia & Gulf Railroad Company;  
 Flint River and Northeastern Railroad Company;  
 Florida East Coast Railway Company (Scott M. Loftin  
 and John W. Martin, Trustees);  
 Fonda, Johnstown and Gloversville Railroad Company  
 (Judson Zimmer, Trustee);  
 Fordyce and Princeton R. R. Co.;  
 Fort Dodge, Des Moines & Southern Railway Company;  
 Fort Worth and Denver City Railway Company;  
 Frankfort & Cincinnati Railroad Company;  
 Gainesville Midland Railroad Company;  
 Galveston, Houston and Henderson Railroad Company;  
 Genesee and Wyoming Railroad Company;  
 Georgia & Florida Railroad (W. V. Griffin and H. W. Pur-  
 vis, Receivers);  
 Georgia, Ashburn, Sylvester & Camilla Railway Com-  
 pany;  
 275 The Georgia Northern Railway Company;  
 Georgia Rail Road & Banking Company, Operated  
 as the Georgia Railroad by Lessees:  
 Atlantic Coastline Railroad Company;  
 Louisville and Nashville Railroad Company;  
 Georgia Southern and Florida Railway Company;  
 Grafton and Upton Railroad Company;  
 Grand Trunk Railway System (Lines in the United States,  
 east of the west bank of the Detroit and St. Clair Rivers)  
 comprising the following carriers:  
 Canadian National Railway Company;  
 The Champlain and St. Lawrence Railroad Company  
 (Canadian National Railway Company, Lessee);  
 The United States and Canada Rail Road Company  
 (Canadian National Railway Company, Lessee);  
 Grand Trunk Railway System (Lines west of Detroit and  
 St. Clair Rivers) comprising the following carriers:  
 Grand Trunk Western Railroad Company;  
 Cincinnati, Saginaw and Mackinaw Rail Road Com-  
 pany (Grand Trunk Western Railroad Company,  
 Lessee);  
 Grand Trunk Western Railroad Company;  
 Graysonia, Nashville & Ashdown Railroad Company;  
 Great Northern Railway Company;  
 The Great Western Railway Company;  
 Green Bay and Western Railroad Company;  
 Gulf and Ship Island Railroad Company;



- The Nachogdoches & Southeastern Railroad Company;  
 The Nashville, Chattanooga & St. Louis Railway;  
 Nelson & Albemarle Railway Company;  
 Nevada Northern Railway Company;  
 New Iberia & Northern Railroad Company (Guy A. Thompson, Trustee);  
 The New Jersey and New York Railroad Company (Peter Duryee, Trustee);  
 New Jersey, Indiana & Illinois Railroad Company;  
 New Orleans and Lower Coast Railroad Company;  
 New Orleans and Northeastern Railroad Company;  
 New Orleans, Texas & Mexico Railway Company (Guy A. Thompson, Trustee);  
 The New York and Long Branch Railroad Company;  
 The New York Central Railroad Company;  
 The New York, Chicago, and St. Louis Railroad Company;  
 279 The New York Connecting Railroad Company;  
 The New York, New Haven and Hartford Railroad Company (Howard S. Palmer, James Lee Loomis and Henry B. Sawyer, Trustees);  
 New York, Ontario and Western Railway Company (Fred-  
 eric E. Lyford, Trustee);  
 New York, Susquehanna and Western Railroad Company  
 (Henry K. Norton, Trustee);  
 Norfolk and Portsmouth Belt Line Railroad Company;  
 Norfolk and Western Railway Company;  
 Norfolk Southern Railway Company;  
 Normetal Railway Company;  
 Northampton and Bath Railroad Company;  
 Northeast Oklahoma Railroad Company;  
 Northern Pacific Railway Company;  
 North Louisiana & Gulf Railroad Company;  
 Northwestern Pacific Railroad Company;  
 The Ohio Public Service Company;  
 Oklahoma City-Ada-Atoka Railway Company;  
 Oklahoma Railway Company (Robt. K. Johnston, A. C.  
 DeBolt, Trustees);  
 The Orange & Northwestern Railroad Company (Guy A.  
 Thompson, Trustee);  
 Oregon Electric Railway Company;  
 Oregon Trunk Railway;  
 Osage Railway Company;  
 Pacific Coast R. R. Co.;  
 Pacific Electric Railway Company;  
 Paducah & Illinois Railroad Company;  
 Panhandle and Santa Fe Railway Company;

- Paris and Mt. Pleasant Railroad Co.;  
 Pennsylvania and Atlantic Railroad Company;  
 280 Pennsylvania and Atlantic Railroad Company  
 (South of Hightstown, N. J., to Pemberton, N. J.,  
 Inc.)  
 (The Union Transportation Company, Lessee);  
 The Pennsylvania Railroad Company;  
 Pennsylvania-Reading Seashore Lines;  
 Pere Marquette Railway Company;  
 Piedmont and Northern Railway Company;  
 The Pittsburg & Shawmut Railroad Company;  
 Pittsburgh County Railway Company;  
 The Pittsburgh and Lake Erie Railroad Company;  
 The Pittsburgh & West Virginia Railway Company;  
 The Pittsburgh, Lisbon & Western Railroad Company;  
 The Pittsburgh, Shawmut & Northern Railroad Company  
 (John D. Dickson, Receiver);  
 Port Huron and Detroit Railroad Company;  
 Port Townsend Southern Railroad Company;  
 The Potomac Edison Company;  
 The Prescott and Northwestern Railroad Company;  
 Quanah, Acme & Pacific Company;  
 Railway Valley Company (Railway Valley Company,  
 Lessee);  
 Rapid City, Black Hills & Western Railroad Company;  
 Reading Company;  
 Richmond, Fredericksburg and Potomac Railroad Com-  
 pany;  
 Rockingham Railroad Company;  
 Rock Island Southern Railway Co.;  
 Roscoe, Snyder and Pacific Railway Company;  
 Rutland Railroad Company (W. E. Navin, Receiver);  
 Sabine & Neches Valley Railway Company;  
 Sacramento Northern Railway;  
 St. Francois County Railroad Company;  
 St. Louis & Belleville Electric Railway Company;  
 St. Louis and Hannibal Railroad Company;  
 281 The St. Louis and O'Fallon Railway Company;  
 The St. Louis and Ohio River Railroad;  
 The St. Louis, Brownsville and Mexico Railway Company  
 (Guy A. Thompson, Trustee);  
 St. Louis, San Francisco and Texas Railway Company;  
 St. Louis-San Francisco Railway Company (J. M. Kurn  
 & Frank A. Thompson, Trustees);  
 St. Louis Southwestern Railway Company of Texas (Berry-  
 man Henwood, Trustee);

St. Louis Southwestern Railway Company (Berryman Hen-  
 wood, Trustee);  
 The Salt Lake & Utah Railroad Corporation;  
 San Antonio Southern Railway Company (Guy A. Thomp-  
 son, Trustee);  
 San Antonio, Uvalde & Gulf Railroad Company (Guy A.  
 Thompson, Trustee);  
 San Benito and Rio Grande Valley Railway Company (Guy  
 A. Thompson, Trustee);  
 San Diego & Arizona Eastern Railway Company;  
 Sand Springs Railway Company;  
 Savannah & Atlanta Railway Company;  
 Seaboard Air Line Railway Company (L. R. Powell, Jr.,  
 and Henry W. Anderson, Receivers);  
 Southern Iowa Railway Company;  
 Southern Pacific Company;  
 Southern Railway Company;  
 The South Georgia Railway Company;  
 Spokane International Railroad Company;  
 Spokane, Portland and Seattle Railway Company;  
 Springfield & Southwestern Railroad Company;  
 The Staten Island Rapid Transit Railway Company;  
 Statesboro Northern Railway (Georgia & Florida Railroad,  
 W. V. Griffin and H. W. Purvis, Receivers, Lessee;  
 282 Sugar Land Railway Company (Guy A. Thompson,  
 Trustee);  
 Sumter and Choctaw Railway Company;  
 Tennessee, Alabama & Georgia Railway Company;  
 Tennessee Central Railway Company;  
 Texas and New Orleans Railroad Company;  
 The Texas and Pacific Railway Company;  
 Texas Electric Railway Company;  
 The Texas Mexican Railway Company;  
 Texas Short Line Railway Company;  
 Texas South-Eastern Railroad Company;  
 Toledo, Peoria & Western Railroad (Holly Stover, Federal  
 Manager);  
 Tremont & Gulf Railway Company;  
 Trenton-Princeton Traction Company;  
 Tulsa-Sapulpa Union Railway Company;  
 Unadilla Valley Railway Company;  
 The Union Electric Railway Company;  
 Union Pacific Railroad Company;  
 United Electric Railways Company;  
 The Utah Idaho Central Railroad Corporation;  
 Utah Railway Company;  
 The Virginian Railway Company;



Wabash Railroad Company;  
 Waco, Beaumont, Trinity & Sabine Railway Company  
 (Paul T. Sanderson, Receiver);  
 Warren & Quachita Valley Railway Company;  
 Washington and Old Dominion Railroad;  
 Washington, Idaho & Montana Railway Company;  
 Waterloo, Cedar Falls and Northern Railway Company  
 (C. M. Cheney, Receiver);  
 Western Maryland Railway Company;  
 The Western Pacific Railroad Company (T. M. Shumacher  
 and Sidney M. Ehrman, Trustees);  
 The Western Railway of Alabama;  
 Wharton and Northern Railroad Company;  
 283 The Wheeling and Lake Erie Railway Company;  
 Wichita Falls & Southern Railroad Company;  
 The Wichita Valley Railway Company;  
 The Winona Railroad Co.;  
 Winston-Salem Southbound Railway Company;  
 Wrightsville and Tennille Railroad Company;  
 Yadkin Railroad Company;  
 The Yazoo and Mississippi Valley Railroad Company;  
 The Youngstown and Suburban Railway Company.

1 Before The Interstate Commerce Commission

Docket No. 29117

UNITED STATES OF AMERICA, COMPLAINANT

v.

ABERDEEN AND ROCKFISH RAILROAD COMPANY, ET AL.  
 DEFENDANTS

*Reporter's transcript of hearing*

Federal Building,  
 Norfolk, Virginia.

Tuesday, July 18, 1944.

Met, pursuant to notice, at 9:30 o'clock a. m.

Before: W. A. DISQUE, *Examiner*.

APPEARANCES:

Donald B. MacGuineas, 3700 Massachusetts Avenue,  
 Washington, D. C., appearing for United States.

Edward H. Cox, Major, J. A. G. D., Room 3725 Munitions  
 Building, Washington, D. C., appearing for Secretary of  
 War.

Windsor F. Cousins, 1740 Broad Street Station Building, Philadelphia 4, Pennsylvania, appearing for The Pennsylvania Railroad Company.

A. P. Donadio, 301 B & O Building, Baltimore, Maryland, appearing for Baltimore & Ohio Railroad, Defendant.

Charles P. Reynolds, 1110 Shoreham Building, Washington, D. C., appearing for Atlantic Coast Line Railroad Company and the Seaboard Airline Railway Company.

2 A. J. Dixon and C. W. Dilly, Southern Railway Building, 15th & K Streets, North West, Washington, D. C., appearing for the Southern Railway System Lines.

W. W. Wolford, 352 Seaboard Railway Building, Norfolk, Virginia, appearing for Seaboard Air Line Railway.

John C. Donnally, Investment Building, Washington, D. C., appearing for The Virginian Railway Company.

D. Lynch Younger, Law Department, Norfolk & Western Railway Company, Roanoke, Virginia, appearing for the Norfolk & Western Railway Company.

Lawrence Chaffee, 1500 First National Bank Building, Richmond, Virginia, appearing for The Chesapeake & Ohio Railway Company.

C. H. Ware, 221 Terminal Station, Norfolk, Virginia, appearing for the Norfolk-Southern Railway Company.

P. G. O'Neil and H. E. Ketner, appearing for State Corporation Commission of Virginia, State Office Building, Richmond 19, Virginia.

Arthur L. Winn, Jr., Investment Building, Washington, D. C., appearing for Port of New York Authority.

Edward K. Laux, appearing for The Port of New York Authority: 111 Eighth Avenue, New York, New York.

Charles R. Seal, 22 Light Street, Baltimore, Maryland, appearing for the Baltimore Association of Commerce, intervener.

H. J. Wagner, City Hall, Norfolk, Virginia, appearing for Norfolk Port Traffic Commission.

3 Samuel H. Williams, 12th & Walnut Streets, Philadelphia, Pennsylvania, appearing for Chamber of Commerce and Board of Trade of Philadelphia.

R. D. Brooks, appearing for the New York Central Railroad Company.

5

## PROCEEDINGS

Exam. DISQUE. The Interstate Commerce Commission has assigned for hearing here today Docket No. 29117, United States of America versus Aberdeen & Rockfish Railroad Company, *et al.*

Who appears for the complainant?

Mr. MACGUINEAS. Donald B. MacGuineas for the United States.

Mr. COX. Edward H. Cox, Major, J. A. G. D., appearing for the Secretary of War.

Exam. DISQUE. Who appears for the defendant?

Mr. COUSINS. Windsor F. Cousins for the Pennsylvania Railroad Company.

Mr. REYNOLDS. Charles P. Reynolds for the Atlantic Coast Line Railroad Company and the Seaboard Air Line Railway Company.

Mr. DIXON. A. J. Dixon and C. W. Dilli for the Southern Railway System Lines.

Mr. YOUNGER. D. Lynch Younger for the Norfolk & Western Railway Company.

Mr. DONNALLY. John C. Donnally for the Virginia Railway Company.

Mr. CHAFFEE. Lawrence Chaffee for the Chesapeake & Ohio Railway Company.

Mr. DONADIO. A. P. Donadio for the Baltimore & Ohio Railway Company.

6 Mr. WARE. C. H. Ware, traffic manager, Norfolk Southern Railway Company.

Mr. BROOKS. R. D. Brooks for the New York Central Railroad Company.

Exam. DISQUE. Are there any intervenors in this case?

I have not the docket here. Does any one desire to intervene at this time?

Mr. O'NEIL. Powell G. O'Neil, for the State Corporation Commission of Virginia.

I do not have sufficient copies to go around, but I will be glad to prepare additional ones.

Exam. DISQUE. What position are you taking in this case?

Mr. O'NEIL. Complainant seeks an allowance for wharfage and handling either by specific designation as 'ship-side' rates or by the application of the absorption provisions published in the terminal tariffs referred to in paragraph IV (of the complaint); or, in the alternative, to establish and apply in the future separate wharfage and terminal charges for the services at Norfolk, Virginia, and corresponding reductions in the existing line-haul rates applicable on export, import, intercoastal, and coastwise traffic to and from Norfolk, Virginia.

The Virginia Commission is opposed to any action by the Interstate Commerce Commission in this proceeding that



7. would disturb the existing port rate adjustment and practices. It is opposed to separate line-haul and terminal charges and favors a continuation of the line-haul rates applying to and from "shipside" at Norfolk.

We reserve the right of developing our position more fully on brief or exceptions if it seems desirable for us to do so.

Exam. DISQUE. I take it then you are opposing the complaint?

Mr. O'NEIL. That is right.

Exam. DISQUE. Does any one else desire to file an intervening petition?

Mr. WINN. Yes. I offer petition for leave to intervene on behalf of the Port of New York Authority. I have handed you the original and I have copies for all the parties present.

The petition does not broaden the issues.

The position of the intervener is that it is opposed to separation of the line-haul rate and other terminal and line-haul factors. As to the other prayers of the complaint, aside from the alternative prayer just referred to, the intervener takes no position.

Exam. DISQUE. Does anyone else desire to intervene?

Mr. SEAL. Charles R. Seal on behalf of the Baltimore Association of Commerce. On behalf of the Port of Baltimore, I should like to intervene at this time.

8. Mr. Examiner, I have supplied the original of our petition to the reporter and have copies for distribution.

Our position would be substantially the same as that of Mr. Winn for the Port of New York Authority.

Mr. WILLIAMS. Samuel H. Williams. I have a petition on behalf of the Chamber of Commerce and Board of Trade of Philadelphia, which does not broaden the issue and our position will be substantially the same as that stated by Mr. Winn. I have copies for counsel, you having the original.

Exam. DISQUE. Does anyone else desire to intervene?

(No response.)

Exam. DISQUE. Are there any preliminaries before we proceed with the evidence?

Mr. WINN. Does the record show, your Honor, the ruling on our petitions for leave to intervene?

Exam. DISQUE. If there is no undue broadening of the issues, the petitions will be allowed, and I assume there is no undue broadening of the issues.

You may proceed, Mr. MacGuineas.

JOHN REED KILPATRICK was sworn and testified as follows.

Direct Examination.

Q. (By Mr. MACGUINEAS): State your name and rank.

A. John Reed Kilpatrick, Brigadier-General, Commanding the Hampton Roads Port of Embarkation.

Q. You are the commanding officer of the Hampton Roads Port of Embarkation?

A. Yes, sir.

Q. When did you assume the command of the Port of Embarkation?

A. Upon activation of the Port on the 15th of June, 1942, and prior thereto for about a month I was in command of the sub-port of Norfolk which operated under the New York Port of Embarkation.

Q. What area is embraced within the Port of Embarkation?

A. The Hampton Roads area covers specifically the Army Base at Norfolk, the Sewalls Point facility at Norfolk, the C & O piers at Newport News and all auxiliary installations, such as the staging area at Camp Patrick Henry, the Kecoughtan Hospital, and so forth.

Q. When you refer to the Army Base at Norfolk, are you specifically referring to what are known as army base Piers 1 and 2?

A. Yes, sir, and the back-up storage incidental thereto.

Q. What about the property commonly known as United Nations Depot?

A. That is now operated for export deep sea loading by the Port of Embarkation, but the facilities are used generally by the Air Corps as an in-transit depot as well.

Q. Is the United Nations Depot also under your command?

A. No.

Q. Can you explain generally the circumstances and occasions under which it was determined to establish the Port of Embarkation at Norfolk?

A. Yes, sir. With the rapid building up of our forces over seas, it was obvious that all of the east coast deep water facilities would be required to supply our troops as their numbers built up.

The Army had a port of embarkation in operation in New York, one in Boston, and one in Charleston, but it was obvious that there would not be sufficient capacity to take care of our requirements.

So a Port of Embarkation was established here at Hampton Roads. Now the Port of Hampton Roads is second only to New York in the amount of freight that it ships. In fact, it is the third in the country. San Francisco exceeds it slightly.

Q. Can you state whether any considerations of military emergency were involved in the determination to set up the port of embarkation?

A. Yes, sir. It was decided to have a port of embarkation work in conjunction with the large naval installations in Hampton Roads in connection with the amphibious training of our troops and the expedition of task forces and so forth; and also it was very desirable to have all our facilities developed to the end that if an accident occurred in New York or Boston or some other large port, the flow of army freight would not be interrupted.

11 Since Hampton Roads was activated, both Baltimore and Philadelphia have been established as cargo ports of embarkation and Searsport, Maine also.

Q. Were any considerations with respect to the prevention of sabotage and spying involved in the determination to establish the port of embarkation?

A. Not exactly except that our facilities were scattered so that one act of sabotage, one accident, one fire, one catastrophe in a large port would not handicap to an undue extent the shipment of troops and supplies overseas.

Q. Can you state generally the volume of traffic that has been and is now being handled over Army Base Piers 1 and 2?

A. I do not want to give specific figures on that for reasons of security, but roughly one-half of the Army freight which is dispatched from Hampton Roads moves over Army Base Piers 1 and 2. In the overall picture, Hampton Roads is second only to New York. It exceeds by substantial margins Philadelphia, Baltimore, Charleston, and Boston. Is that sufficiently specific? It is in the hundreds of thousands of tons.

Q. Per what period of time?

A. Per month.

Q. That is sufficient. Again, without being too specific, can you indicate what type of traffic moves over the Army Base Piers 1 and 2?

12 A. Everything that the Army needs and uses—food, ammunition, Quartermaster supplies, Engineer supplies, Lend-Lease supplies, vehicles, guns, tanks—



everything that the Army uses I think we have shipped over these piers, every type of supply.

Q. Since you have assumed command of the port of embarkation, has there been any movement of commercial traffic over Army Base Piers 1 and 2?

A. Yes, sir.

Q. By "commercial traffic," I mean non-governmental traffic.

A. Yes.

Q. Can you give us a general picture of the commercial traffic movement?

A. Well, the incoming movement has been limited chiefly to ore of various types and categories. The outgoing movement has been cement, billets, wire, clothing, and so forth.

Q. Do you still permit the use of Army Base Piers 1 and 2 for the movement of commercial traffic?

A. Yes, in so far as the shipments do not interfere with our straight Army requirements. Whenever they can be worked in without handicapping the Army shipments, I have permitted commercial shipments.

Q. Does the Norfolk and Portsmouth Belt Line place the cars on the tracks on Army Base Piers 1 and 2?

A. Yes, sir.

Q. Since you assumed command of the port, have the carriers been making any shipside delivery at Army Base Piers 1 and 2?

13 A. No.

Q. Just what services have the carriers been performing since June 15, 1942, with reference to the delivery of traffic at those Army Piers?

A. They deliver the cars. The Belt Line delivers the cars, but from that point on the Army would handle the unloading of the cars on to the piers and so forth.

Q. When did the Army begin to unload the cars to the pier floor?

A. About the 15th of June, about the date of activation of the port. I am not sure of the exact date but it was the first ship that was speeded up for Army loading after that day.

Q. Why did the Army then assume the function of unloading cars from the pier tracks on to the floor?

A. When the Army took over on June 15, Army Base Piers 1 and 2, at the same time it took over the existing organization, the existing operating organization of the Terminal Transport and Trading Company that had been fulfilling this function for the railroads and the situation continued just as it had. The same men that had been unload-

ing the cars for the railroad unloaded the cars for the Army, under the same supervisory force. Then gradually as shortages of labor developed, we put soldiers in unloading the cars when necessary.

Q. At the time you assumed command of the port; did you refuse to allow the carriers to unload the cars at the piers?

14 A. No.

Q. At any time after you assumed command, did they offer to continue their service of unloading the cars at the piers?

A. No.

Q. Who is now assuming the burden of the cost of unloading the cargo from the cars on to the pier floor for shipside delivery?

A. The Army.

Q. Can you indicate generally what elements of cost are involved in the performance of that service?

A. The actual labor costs involved in the main are the men who actually unload the cars, the cost of checkers and the supervisory force, and all of the incidental costs that are a little difficult to segregate, as, for example, the keeping of the piers clean, the keeping of proper fire protection, and fire guards. How much of that is involved in the cost of unloading and how much would be normal maintenance is a little difficult to segregate.

Q. Is the actual unloading of the cars performed by civilian labor at this time?

A. Yes, to the extent that civilian labor is available in surplus to meet our peaks. We throw in troops in a few cases and we have used stevedores, too.

Q. Where do you get the civilian labor that is ordinarily used for unloading the cars?

A. We took over the labor force of the Transport  
15 Terminal and Trading Company. We get our civilian labor in the same way that other terminals do, from the local supply.

Q. Is the use of any equipment involved in the unloading of cars on to the pier floors?

A. Well, due to the shortage of labor and due to the scarcity of labor, we have been forced to use cargo handling equipment, lift trucks, trailers and so forth to the maximum in order to overcome the shortage of labor.

Q. Who owns the equipment that is used for that purpose?

A. The government, the War Department.

Q. Who is paying for its maintenance and operation?

A. The War Department.

Q. Who assumes the burden of depreciation and maintenance cost of the piers themselves?

A. Of Piers 1 and 2? The government.

Q. Since you have had command of the port, have you ever refused the carriers permission to unload the cars onto the pier floors for shipside delivery?

A. No.

Q. What about the converse of the situation, the traffic coming from ship to car? Who performs the service of loading from the pier floor into the car?

A. The Army does that. When ore is handled—that is, when incoming ore is handled, the commercial interests have handled that.

16 Q. If the import is commercial traffic?

A. If it is commercial traffic, yes. On all government freight, both in and out, the Army handles the whole thing.

Q. Did you ever make demand on the carriers to perform the service of unloading the cars to the pier floor, and, conversely, from the pier floor to the cars?

A. Yes; to do that or grant us credit for lien thereof.

Q. Do you have an exhibit which contains the correspondence to and from the government and the carriers with reference to your demand and the carriers replied in connection with the performance of unloading services at the Army Base Piers?

A. Yes.

Mr. MACGUINEAS. May this be marked for identification?

Exam. DISQUE. Yes.

(Complainant's Exhibit 1, Witness Kilpatrick, marked for identification.)

Q. (By Mr. MACGUINEAS). General Kilpatrick, I will show you this map and ask you if that is a correct representation of the Norfolk Harbor area and the pier facilities.

A. Yes.

Mr. MACGUINEAS. May this be marked Complainant's Exhibit No. 2 for identification?

Exam. DISQUE. Yes.

(Complainant's Exhibit 2, Witness Kilpatrick, marked for identification.)

17 Q. (By Mr. MACGUINEAS). If the carriers were willing to perform the service of unloading the cars from the pier track on to the floor of the pier and the con-



verse, load from the floor on to the cars, would you permit them to perform that service?

A. Yes, subject to the ordinary rules of security. We would have to screen their employees, we would have to keep in effect certain rules as regards safety, fire, cleanliness and so forth, that are considerably more stringent than are the customs in commercial practice, but that is merely due to the nature of our work.

Q. Would you permit the carriers to perform that service with the same force of civilian labor that is now being used by the Army?

A. Yes. I would like to point out, though, that the civilian force is entirely inadequate and has to be supplemented by large gangs of men from time to time as we hit our peak loads.

Q. But to the extent that the carriers might be able to provide civilian labor for performing that service, would you allow them to do it?

A. Yes.

Exam. DISQUE. Right there, may I ask a question?

Suppose that civilian labor was insufficient, what would you expect the railroads to do?

18 v The WITNESS. I would have to meet that situation by the use of troops.

Exam. DISQUE. You would?

The WITNESS. Yes, the point being that our convoys must move, our freight must move. We can not advise the overseas theatre: "We are sorry, we can not send you food because the railroads have a shortage of labor to unload cars at the Army Base Piers."

Q. (By Mr. MACGUINEAS). Will you describe briefly the arrangements that are now in effect at United Nations Depot with reference to the loading and unloading of cars to pier floors and vice-versa?

A. That will have to be divided into two categories?

One, the freight which is handled by the in-transit depot, and

Two, the freight that is handled by the Port of Embarkation.

The War Department has leased from the Norfolk Western Railroad that facility for a substantial sum. The War Department also has entered into an operating contract with the Lincoln Terminal Tarding Company—Lincoln Tidewater Terminal Company, under which contract the Lincoln Tidewater Terminal Company assumes the obliga-

tion of unloading the cars at shipside and, under a separate contract or agreement with the railroads obtains a fee for that service, a wharfage handling fee of approximately 80 cents a ton. Under the Lincoln Tidewater Terminal's contract with the government all such sums revert to the government, the government paying the out-of-pocket expense, the cost of the labor, and the cost of supervision, plus a service fee to the Lincoln Tidewater Terminal Company.

Q. Are those payments which the carriers have been and are making to the Lincoln Tidewater Terminal Company made by checks of the carriers?

A. Yes, sir.

Q. Do you know how those checks are made payable?

A. They are endorsed over to the government.

Q. They are made payable to the Lincoln Tidewater Terminal Company?

A. Payable to the Lincoln Tidewater Terminal and are endorsed over to the government.

Q. Have you ever had conversations with carriers' representatives as to the manner in which this loading and unloading service is being performed at United Nations Depot?

A. Yes, sir.

Q. Can you state with what representative you have had such conversation?

A. Yes. With the Pennsylvania Railroad and its representatives, with the Norfolk and Western and its representatives, with the Belt Line and its representatives, and with the Virginian.

It is a long, continuing series of conversations which have extended over a two-year period and the formal results of those conversations are summed up in the formal demands which we have made in this file of correspondence which already has been submitted in evidence.

Q. In those conversations, did the carriers' representatives indicate to you that they knew that the proceeds of the payment they were making for the unloading service were going to the government?

A. I mentioned that to them, yes. I can not testify that I told each one that I have listed. I may have told the Pennsylvania of that situation and not told the Norfolk & Western, or vice versa; but the Pennsylvania—yes, I can say the Pennsylvania, the Norfolk & Western, and the Virginian are all thoroughly familiar with that situation, and the C. & O. also.

Q. Have you entered into arrangements with the Chesapeake & Ohio with respect to the performance of unloading and loading at their piers at Hampton Roads?

A. Yes, sir.

Q. Will you describe that briefly?

A. The situation at Newport News, the Newport News terminals of the C. & O. are quite comparable to the Army base situation. When the Port of Embarkation was activated we took over the C. and O. Pier organization, 21 that is, its piers, supervisory force, its pier labor, its pier superintendents, and so forth, and under a contract giving the government the preferential right to use their facilities, the government pays the payroll of that type of labor of the pier organization and performs the same service of car unloading that the C. & O. formerly performed with men on its own payroll, and in consideration of our taking over the complete payroll and their organization, the C. & O. makes an allowance to the government of 50 cents a ton on freight passing over the piers.

Q. There is no wharfage allowance?

A. There is no wharfage allowance because the government pays nothing for the use of the piers. The C. & O. maintains the piers, keeps them in good repair, and so forth, so, therefore, no wharfage is involved.

Q. At Army Base Piers 1 and 2, can you indicate to what extent it has proven necessary to use the soldier labor for unloading because of the inadequacy of civilian labor?

A. That is a varying factor that goes up and down as our load increases. We have only a limited number of car unloaders. We have now assigned permanently to that work certain Italian service unit numbers, formerly prisoners of war. They unload cars for us, and from time to time we use troops, and, to meet emergencies, we even have had to use troops that were being staged; that is, troops on their way overseas.

Q. If the carriers were performing that service, would you permit them to use civilian labor exclusively to do so?

22 A. Yes, sir, to the extent it was available.

Mr. MACGUINEAS.. That is all of the direct examination.

#### Cross Examination.

Q. (By Mr. Cousins). General Kilpatrick, I do not quite understand your last answer.

What did you mean when you said you would permit the carriers to use civilian labor to the extent available?



A. Just what I said. There is not in this vicinity sufficient civilian labor, in my judgment, to do that job. It must be supplemented by Army labor, I mean to meet the peaks and the emergencies with which we are faced. We have a convoy deadline to meet and we have to work day and night. After you have worked all the available civilian labor all day, they can not work all night, and a new crew has to be brought in.

Under certain circumstances it has been necessary to use soldiers to help at the Lincoln Tidewater Terminal at Sewalls Point in the in-transit depot car unloading.

When the flood of cars was too heavy for the available amount of labor that they have, soldiers have been used to unload cars for the Air Corps in the in-transit depot, which is strictly a function of the Lincoln Tidewater Terminal Company.

In other words, the urgency of the movement is paramount regardless of who does the work, whether it is soldiers or civilians or what. We have to keep our freight moving. We have to load our ships and we have to meet our convoy dates.

Q. When you are doing that work, you work 24 hours a day?

A. Yes, sir, at times.

Q. Most of your freight, I suppose, is export?

A. Almost exclusively export.

Q. If the railroads were going to undertake to perform the service for you they will have to load just as you do; that is, continually 24 hours a day?

A. At times, not always. As these emergencies come, the emergencies have to be met and we can not always foresee them. It depends upon the calls from overseas.

Q. How much notice would you give the railroads? How much notice would you be able to give a railroad that you wanted them to unload certain freight from a car?

A. The amount of freight that is set up for each convoy is known weeks in advance. We set up the total tonnage for a convoy and the total tonnage which is allocated to a specific terminal we know well in advance.

The specific answer to your question is more in the railroad's hands than in ours because how the peaks run depend upon the delivery of freight by the railroads. We can give the total tonnage but we can not always tell exactly when the railroads are going to deliver the freight to us.

Q. You know what you want to put on the boats but you do not know when it is going to arrive at the base?

24 A. Exactly.

Q. Is it a fact that some of the freight coming in for a convoy must be unloaded from the cars immediately?

A. Yes, sir.

Q. And that other freight for the same convoy will stand in your piers some time?

A. That is possible. With the big flow of freight coming in and with the uncertainty as to specific delivery dates, we have a difficulty which commercial interests don't have. We have to load bottom cargo first, then filler cargo, then on top of that blow-up cargo.

As freight comes into the piers, we are sometimes in need of bottom cargo and have to hustle those cars in right down to the piers and work them, whereas other cargo for that same ship or for the same cargo which is loaded later in the loading cycle may be in the port for several days.

Q. Do you think it will be practicable for the various railroads to undertake to handle their own freight separately; that is to say, for the Norfolk-Western to come in on the pier and unload its freight, then the Pennsylvania to come in and unload its freight, and for all the others to do likewise?

A. That would present a very complicated situation. That does not obtain in other ports where the railroads are now fulfilling that function. In Baltimore the railroads actually unload.

25 Q. Your situation requires more unified operation than that, does it not?

A. No, I would not say so, if it were properly organized. We could not have these hiatuses, we could not have delays while the Pennsylvania were unloading, and a gang of labor to unload a Pennsylvania car, and then a Norfolk-Western car come in and they say, "We will not touch that car. You will have to telephone and get a Norfolk and Western gang." That would be an almost impossible operating condition.

Q. You have to have the whole operation under one supervision and control, do you not?

A. That is desirable.

Q. In your opinion, why did the Army think it necessary to take over this pier instead of making use of the pier under the prior public operator?

A. That would not have been feasible at all, because the Army has to control the overall operation, the bringing of the cars in, the allocation of ships, and so forth. It has to

be an Army operation. It can not work under civilian direction; I do not think.

Q. That would not be from the standpoint of controlling the ships, would it; so much as controlling the situation on the piers?

A. Everything, ships, cargo, and everything. Bear in mind we have embarkations and debarkations. We handle prisoners of war over these same piers at the same time. We even have to move a ship out into the stream that is loading cargo in order to load troops or to take off prisoners of war or rotational troops.

Q. I understand you have to control the movement of the ships. Of course you would do that no matter who was operating the pier in so far as those ships were in government service, but what is the difference between the operation of the piers now from what they were prior to 1942?

A. The government controls the priorities of loading and the type of loading, it controls the stevedores in how they work and when they work, when they work overtime, and when they work straight time. The car unloading has to fit in with the over-all picture.

A civilian organization could not handle the freight from the depot into the ship. That is supervision that the Army has to furnish and a coordination that the Army has to furnish.

Q. I understand that there is a rather large storage yard—that is, railroad tracks in back of these piers. Is that so?

A. Well, yes, although that is a comparative question. It is not large compared to the big classification yards of the Virginian or the Norfolk and Western.

The capacity, I think, is in hundreds of cars, not thousands of cars.

Q. You do have the yard which is capable of holding several hundred cars?

A. Yes; the exact number I have forgotten. I think it is around 500. That is, operating capacity.

Q. How many railroads reach that yard?

A. The Belt Line.

Q. And the Virginian?

A. It does.

Q. Can you tell us generally where they come under your property?

A. That is a technical railroad operating question that I am not quite competent to answer. I think we will have other witnesses who are completely familiar with the tech-



nique of the railroad operation who can answer that question better than I can.

Q. You will have some one who can tell me how the railroads make delivery into this yard?

A. We have officers who are quite competent to testify on that point.

Mr. COUSINS. Are they going to testify?

Mr. MACGUINEAS. I think that is a question that should be addressed to counsel, not the witness.

Mr. COUSINS. All right. Will you answer?

Mr. MACGUINEAS. I think my redirect examination will clarify the situation.

Mr. COUSINS. If you are going to clear it up through the General, I might as well do it right now.

I want to know a little bit about the operation in the yard.

Mr. MACGUINEAS. You may ask him anything you like. He said he could not answer that question.

Exam. DISQUE. In that connection, do the railroads bring the cars to you at will or do you order them to bring—

The WITNESS. We order them to bring them in.

Q. (By Mr. COUSINS). Do you want to say how far from shipside the entrance to the yard is, or would you prefer to leave that to someone else?

A. I would rather leave that to someone else.

Q. How long do you hold that freight on the pier before it is exported?

A. There is no way to average that. At times the freight comes right out of the car and into the ship without ever touching the pier except to be carried across it in motion.

In certain other cases, when we can bring freight in and stock our piers, unload the cars and marshal our freight for a ship, it might stay on the piers for a period of two, three, four, five, or six days. There is no way of averaging it up. We keep no statistics on that.

Certain categories of freight are kept on the pier under priorities.

After we have brought freight in to load on a ship, overseas will tell us they do not want flour or they do not want oil or gasoline, but want something else put in the space in the ship that we had intended to put this particular type of freight in; then it might remain on the pier for some days until another convoy or until we had space to get rid of it, or ship it back to the depot; and also certain small quantities of freight might stay on the pier some days when they are shut out.

For example, we may calculate 100 cars of flour will go into a ship. As the loading progresses, we find that 5 cars are shut out. They stay on the pier until they are re-allocated to another ship and that period might be days or it might be a period of a couple of weeks.

Q. Is the freight that is kept in storage for more or less time generally kept in the shed after unloading rather than in the cars?

A. Yes. We release the car at once. Our objective is to reduce to the irreducible minimum the length of time that cars are immobilized; so we discharge them and release the empty cars just as soon as we can.

Q. That would mean when you do not have a convoy on hand that you would be unloading all of that incoming freight on the pier?

A. We always have a convoy on hand. We are always working. This is a continuing situation.

Q. I suppose it should be the other witness I should ask about the use made of your locomotives on the property. Is that so?

A. Well, I can answer that. The Belt Line keeps one locomotive at the Army base at all times. We have several Army locomotives. We found great difficulty in determining what was the obligation of the railroad as regards placement. It required too complicated statistics to determine whether a car had been placed once or whether this was the second time we called for the car to be placed.

We made a deal with the Belt Line that they keep one engine and one crew there all the time. They worked for us without regard to whether a specific car might have been placed by that locomotive once or twice or three times, and the Army has its own train crews.

There is the one Belt Line locomotive and the Army locomotives. Our total switching requirements are adequately taken care of.

Q. How many Army locomotives do you have?

A. I think we have three. I may be inaccurate on that. I would like to check later on the accuracy of that statement. I think it is three.

Q. Is any freight brought into the piers and taken out again other than by vessel?

A. Negligible amounts. At times we have to transfer freight from one pier to another and two or three cars might be shut out of a ship for a certain specific destination and the next ship going to that destina-

tion might be instead of at the Army Base berthed at Newport News, in which case we would transfer the freight either by car, by truck or by lighter.

Q. But it would be within the limits of this port, would it not?

A. Within the limits of this port, with the exception of certain isolated cases where we might ship freight back to a depot, an overshipment, for example. As a specific illustration—I guess I better not go into that and be too specific.

Q. That is all right. That is enough.

Is all of the freight that comes on to your pier in condition for export?

A. Yes, with very minor cases. Certain boxes may have to be recovered. We do recovering on the pier. In certain cases if it is badly damaged, we may have to send them back to a depot.

Q. But you do not do any assembling?

A. On the piers, no.

Q. No manufacturing of any kind?

A. No, not on the piers.

Exam. DISQUE. What do you mean by assembling?

The WITNESS. We do a certain amount of processing of vehicles. They come to the Army Base and they would not be unloaded on the piers. They would be unloaded  
32 in the parking space where they can be prepared for export, then they would be towed down to the piers to be loaded on to the ship; but the actual processing does not take place on the pier.

Have I made myself clear?

Exam. DISQUE. Mr. Cousins used the word "assembling."

Mr. COUSINS. Yes, that is what I had in mind.

Mr. MACGUINEAS. I think counsel ought to define his word. He used it.

Mr. COUSINS. The witness and counsel understand each other. I think everybody else does.

Q. (By Mr. COUSINS). How would you expect the railroads to perform the unloading with respect to that material that you have just told us is assembled there?

A. That could be done quite easily in the other sections of the Army Base, not on the piers. That is no problem. That is a very easy type of railroad operation.

Q. You would expect the railroads to just unload the car when it came in, a car full of lights, or engines, or whatever it was, back in your warehouse—

A. No, not in the warehouse; on an apron.



Q. Back on the apron; then their obligation would be done, would it?

A. Yes, sir.

Q. You would take the vehicles after they were assembled out to the ship?

33 A. Yes, sir.

Exam. DISQUE. You would be in the manufacturing business on the pier, then, would you not?

The WITNESS. Not on the pier. It is not exactly manufacturing. It is processing. It is water-proofing the vehicle that we do.

Exam. DISQUE. All right.

Q. (By Mr. COUSINS). You said that you permitted a small amount of commercial freight to be handled over the piers.

A. I did not say ~~that~~. I said a substantial amount.

Q. All right. How do you permit that? What arrangements do you make for that?

A. Either the War Shipping or Ships agent calls us to ask if they can have a berth for handling commercial freight, and if we have a berth available and if it will fit into our schedule, all right. Then there is another type of shipment of billets and steel, which is arranged, as I recall it, through the British Ministry. It is commercial freight, but it is handled through the British Ministry. We have shipped British steel as bottom cargo in lieu of ballast on certain of our Army cargo ships.

Where we shipped cement commercially in one case, the civilian contractor that was involved made the arrangement direct with us for that shipment.

Q. That was export?

A. Export.

34 Q. Who unloaded the car?

A. We did. I do not recall the specific understanding, but I would remember if any outside group had come in to do it. We did the unloading for him.

Q. You made a charge for that?

A. No.

Q. In other words, is that just a courtesy?

A. We expected the railroads to refund it as a result of this action.

Exam. DISQUE. On these commercial shipments, who is the carrier? Is the government the carrier or is it some private ship into which you and the private shipper are loading freight?

The WITNESS. That is a question I would rather let Mr. Deyereaux, the War Shipping man answer. It is a very complicated question as to who charters the ship, just where the Army and just where the War Shipping Administration ends. I would not feel competent to testify as to the detail of those arrangements.

Exam. DISQUE. It may not be important but I would like to know for my own understanding of the case.

Q. (By Mr. COUSINS). I think you said that the only commercial freight coming in, imported; was ore?

A. Ore is the only substantial amount. One other ship with commercial freight came into Newport News, 35 one of the Luckenbach ships, with about 12,000 tons of miscellaneous cargo from East Africa and other points in that vicinity and while they agreed to get the ship in, unload it and out, they did not keep their promise. Our piers were cluttered up with all sorts of commercial freight while they were clearing customs, while the Department of Agriculture was passing on certain things, while certain other types of freight was being classified. Since then I have not permitted import freight of a miscellaneous character, or miscellaneous cargo. Bulk cargo, like ore and so forth, that can go from ship into a car and away, yes, but when a cargo requires classification, sorting, inspection and so forth, on the piers before it is shipped, we have stopped that.

That tied up our piers too long and too much.

Q. The ore is a bulk freight that goes into open top cars?

A. Into open top cars and away.

Q. When you say there has been a substantial amount of commercial freight handled, were you talking about Army Base Piers 1 and 2?

A. Yes.

Q. What is a substantial amount? What do you mean by that?

A. I think I can tell you in carloads. During the period that we are discussing, something over 700 cars of freight were so handled.

Q. Was that largely export freight?

A. Export freight.

36 The import freight was something over 20,000 tons.

Q. Can you tell me a little more closely what period this export freight moved out in? We are talking about a two-year period.

A. A two-year period.

Q. Has that moved lately?

A. The last commercial movement that I recall was an ore ship coming in, and that was a couple of months ago. I do not remember the exact date.

Q. When did such commercial freight move out export?

A. I can not answer that. I would have to look that up.

Q. It has not been lately, though, has it?

A. I do not know. I would have to check on that.

Q. Was the larger percentage of your commercial freight handled just shortly after the former operator which I think you said was the Transport Trading and Terminal Company—what was the name?

A. The Transport Terminal and Trading Company.

I have not the data on the specific dates. I would have to check that, but the handling of this export freight had nothing to do with the former operator. There was no connection between the two. It was not a hold-over from his operation. It was a new transaction.

Q. In connection with this commercial freight, do you permit vessels to come into your pier for loading or unloading of which you are making no use at all?

A. Yes, when it does not interfere with our normal Army operation.

Q. Do you assess dockage charges against such vessels?

A. Yes, and we have collected.

Q. I did not quite understand what you said about the payments to the Lincoln Tidewater Terminal. Did you say for what kind of freight those payments were made?

A. Export freight and import freight.

Q. By that do you mean the government freight or commercial freight?

A. Both. There has been no commercial freight to my knowledge that has gone over the Sewalls Point pier, although there might have been, but I have no knowledge of that.

Mr. MACGUINEAS. By "Sewalls Point" you mean the United Nations Depot?

The WITNESS. United Nations Depot, yes, sir.

Q. (By Mr. COUSINS). Does the Lincoln Tidewater Terminal Company have the right to handle commercial shipments there?

A. Yes, sir.

Q. On its own account?

A. No, for the account of the government, and all income they get from it goes to the War Department.



Q. You have not known of any payments made by the Pennsylvania Railroad Company to Lincoln Tide-38-39 water Terminal for handling your freight, have you?

A. No. The Pennsylvania, as I understand it, has refused to make such payments.

Q. What is the situation with respect to other railroads?

A. Other railroads have. I have not the specific data because that is not under my command. That is by agreement or contract between the Air Corps and the Tidewater Terminal.

Q. Do you know which railroads have made payments on government freight and which have taken the same position as the Pennsylvania?

A. My recollection, and this is subject to correction, that the Virginian has made payments.

Q. So far as you know the others have not?

A. I have no knowledge of whether or not others have. I happen to know that one check was received from the Virginian.

Mr. MACGUINESS. I may say another witness will go into that in more detail.

Q. (By Mr. COUSINS). Just a word about the C & O arrangement that you described over Newport News. The Chesapeake & Ohio is still in charge of its pier there, is it not?

A. No. We are.

Q. Are you in charge of commercial shipments and everything else moving in there?

A. I have the veto on commercial shipments. The Chesapeake & Ohio get my consent before they contract to bring in commercial shipments.

40 Q. When they come in the handling of them is by the Chesapeake & Ohio. We do not bother with them.

Q. Suppose the freight goes into storage on your facility?

A. It does not.

Q. It does not?

A. No. We control the warehouses. We have rented the warehouses back of the piers and I will not permit any freight to come in which will clutter up our piers. The piers have to be kept free and open. The one time that I did let them handle a large amount of commercial freight, the experience was not happy because it tied up one pier for quite a period.

Q. Was the freight stored there?

A. Well, it was stored there in-transit. It was stored there. Some of it was hemp, for example, which had to be classified, inspected, and so forth, and certain other spices and so forth had to be cleared by different governmental agencies. We could not get it into cars and away and it cluttered up the piers for quite some period of time.

Q. Is your position as to keeping the piers free of all that sort of freight the same at 1 and 2?

A. Yes, sir.

Q. General Kilpatrick, you are the person who has actually conducted the negotiations with the railroads about this question, are you not?

A. No, I would not say so. I started it. I referred  
41 it to the Chief of the Transportation Office, and this action is the result of action on the part of the office of the Chief of Transportation.

Q. In your opinion, why should the railroads pay you what you seek in this case?

A. Very simple. Because they have collected in the line-haul rate for this service and have not rendered the service. They gave the credit to the commercial interests that had the piers before we took over. When we took over on the 15th of June, the physical situation was not changed at all. The same men unloaded the freight, the same supervisory force supervised the men who were unloading the freight. The only difference was that Uncle Sam was paying the bill and any profit or loss would be to the government and not to the private terminal operator.

It never occurred to me that we would not get this credit because I figured on that offsetting the cost of our pier organization, as it did at Newport News.

Q. Why should the Pennsylvania Railroad, for example, help pay the cost of maintaining your pier?

A. The Pennsylvania Railroad in its line haul rate has included an amount for export, it has added a certain amount to its freight rate at some time or other in the past. The rate is built up on that.

Q. You have answered both of my questions in ex-  
42 actly the same way, which, as I understand it is that the freight rates include the service, the payment that you are asking for, therefore your position is if you do not get it the government is paying too much of a freight rate?

A. No, I did not say that. I said the railroad companies are perfectly willing to give a private interest this credit and on exactly the same facilities they did give the credit.

up to the time we took over, the only change in the situation being the direction, the directive force, that is, who handled the operation.

The same people did it, they did the same thing, but as of the 15th of June, because the government took title to the operation, the railroads stopped allowing the credit.

Q. General, you do not care what the railroad did for this private operator so long as you are not paying excessive freight rates, do you?

A. I think that the government should be treated exactly as commercial interests. I do not see why the government should not have the same rights and privileges that a private interest has.

Q. What does it matter to you whether it is so treated or not?

Mr. MACGUINEAS. Mr. Examiner, I object to this line of questioning. General Kilpatrick is here as a witness to state the facts with which he is familiar. He is the  
43 witness here to state the position of the United States of America and not legal conclusions, and in this connection I think recent questions have been along that line.

Exam. DISQUE. He started the complaint. He complained about a certain situation. Mr. Cousins is trying to find out what his complaint is.

Mr. MACGUINEAS. The complainant is the United States of America. The decision with respect to filing the suit, as the General testified, was not made by him; therefore what he may think about the basic issues of the case is immaterial.

Exam. DISQUE. Who is the Government? Who should testify as to what the complaint is? Who is complaining here? Who is the man who is complaining?

Mr. MACGUINEAS. No man. It is the United States of America, the sovereign, that is complaining.

The issues here are perfectly well defined in the complaint and they will be defined in the brief.

This witness is just testifying to the facts which we contend will support the issues as we framed them and I think the cross examination should be limited to a cross examination on the facts.

Exam. DISQUE. The government has no thought on this matter. It is strictly a question of fact and law.

Mr. MACGUINEAS. I do not see how any lawsuit may involve more than facts and law.

44 Exam. DISQUE. There must be some reason why a lawsuit is started.



Mr. Cousins wanted to know why it was started.

Mr. MACGUINEAS. Mr. Cousins ought to read the complaint. Our reasons are set forth in the complaint.

Mr. COUSINS. I am not asking the General to draw any legal conclusions, Mr. Examiner. I will not ask him any question that requires a lawyer's answer.

Exam. DISQUE. Have you all the information you want?

Mr. COUSINS. Almost.

I would like to proceed a little bit.

Q. (By Mr. COUSINS). General, if the railroads should discontinue the practice of absorbing these wharfage and handling charges at Norfolk, would that be satisfactory to you?

Mr. MACGUINEAS. Mr. Examiner, I object to that question.

Exam. DISQUE. Will you answer the question?

Mr. MACGUINEAS. No. I am not authorized, and neither is General Kilpatrick authorized to answer that question.

Exam. DISQUE. Somebody brought this complaint.

Now, who was it?

Mr. MACGUINEAS. The United States of America brought the complaint.

Exam. DISQUE. Will the United States of America be satisfied if the railroads withdraw this allowance at the piers?

Is that your question?

45 Mr. COUSINS. Yes, but I am not concerned about the United States. That is me just as much as anybody else.

I want to know how General Kilpatrick feels about it. I will be satisfied if he speaks for himself. I can speak for myself.

The WITNESS. I will not answer that question.

Q. (By Mr. COUSINS). Why will you not answer it?

A. Because that would get into—I do not think I have to explain why. My personal feelings have no bearing.

Mr. COUSINS. Well, I think I will drop this line of questioning with the understanding that there is not the issue of undue prejudice in this case because counsel for the Government certainly has objected to any questions that might tend in that direction.

Exam. DISQUE. Is there an allegation of Section 3?

Mr. MACGUINEAS. There is no understanding at all as to what the issues are in this case. The complaint states what the issues are in the case. If we prove them by our witnesses, very well; if we do not, very well.

Mr. COUSINS. That is all I have.

Q. (By Mr. REYNOLDS). Am I correct in understanding that the Army now owns Army Base Piers 1 and 2?

A. The government owns them. There has been a series of transactions between the War Department, the Maritime Commission, the Navy, different government  
46 agencies, but the title rests in the United States Government or one of its subsidiary branches.

Q. I have been under the impression that the Army constructed the Army base at Piers 1 and 2 during the last war; is that correct?

A. That is correct.

Q. Between the last war and this war they leased them out to various people, and on June 15, 1942, they assumed possession again?

A. That is correct. That is, the Army did. The Maritime Commission had leased the piers to these commercial interests.

Q. But the Army constructed the piers, as I understand it, during the last war?

A. Or immediately thereafter.

Q. Or immediately thereafter. They were used for war purposes during the last war, were they not?

A. I do not know. They were not finished in time to be used for anything except the reverse movement. The extent to which they were used I am not familiar with.

Q. They were constructed for the purpose of being used just as they are used today, were they not?

A. Yes, sir.

Q. I understood you to say that there is a Belt Line engine in the Army base that is engaged in switching cars in that base; is that correct?

A. Yes, sir.

47 Q. Is that engine not operated under the control of the government yard master in the base?

A. I am not competent to answer that. I would rather have one of our technical witnesses cover the detailed operation of the yard.

Q. You do have a government yard master in the Army base, do you not?

A. Yes. I think he actually is on the payroll of the Navy, though, not the Army.

Q. Is it not true that he controls the movement of all cars within the Army base?

A. I would rather have another witness answer the technical details of that operation.

Mr. REYNOLDS. That is all.

Q. (By Mr. DIXON). If the carriers took over the work on Piers 1 and 2, where would lie the ultimate responsibility for getting it done? Would that responsibility finally be yours?

Mr. MACGUINFEAS. Now, Mr. Examiner, I submit that is a question of law when he asks "what is the ultimate responsibility?"

Exam. DISQUE. As the question is framed, you are asking a question of law. You were asking him what he would expect.

Mr. DIXON. Yes.

Let me put it this way: Would the railroad personnel be subject to your orders?

48 The WITNESS. Within certain lines, yes, similar to the way the situation operates at Baltimore under exactly comparable conditions. There the railroad personnel does the car unloading for the Army.

Q. (By Mr. DIXON). I am not familiar with the situation at Baltimore.

Could you describe just what you have in mind?

A. I think I have answered it.

Q. I am not familiar with the situation at Baltimore. I am trying to simply find out the extent to which you would consider the railroad personnel to be under your supervision and command.

A. Not under my command. I would tell them what we wanted to accomplish, what cars we wanted unloaded, when and where, and I would expect them to do it.

Q. Precisely as designated?

A. Yes, sir.

Mr. DIXON. That is all.

Q. (By Mr. WIXN). Would it be a satisfactory operation if the railroad personnel should unload these cars at their convenience and in the way they, from an operating standpoint, wanted to do it?

A. No. They would have to unload them in such a way as we could keep our ships moving.

49 Q. In other words, the unloading work would have to be done according to your schedule to meet your need?

A. Yes, sir.

Q. And it could not be done at railroad convenience?

A. No.

Q. Have you not also made it clear, General, that the available civilian personnel is inadequate to do this job?



Have you made that clear?

A. In my judgment the available civilian supply of car unloaders in the port is inadequate.

Q. So that this job of loading and unloading and handling freight between car and ship could not really be done by the railroads with the civilian employees?

A. They have done it at Baltimore under similar conditions. They might have to import labor.

Q. They might have to import labor?

A. Yes, sir. They might have to take other steps to provide an adequate supply of labor.

Q. You have used Army personnel to supplement the civilian workers?

A. Yes, sir.

Q. During peak times?

A. Yes, sir.

Q. Now, you say this operation is continuous, you are unloading cars all the time, and you are loading vessels all the time.

Currently, what proportion of your employees are doing unloading work that are Army personnel, either Italian or American, and what proportion are civilian?

A. I would have to look up our statistics before I answered that question. My impression is that at the present time we have about half enough civilian car unloaders. I may be wrong in that. It may be a smaller percentage or it may be greater.

When I say it is a continuing operation, that does not mean 7 days in a week. On any one given date we might have nothing going on, then we would swing into another convoy.

Q. You are now in a 50-50 basis as between civilian employees and Army personnel?

A. In general, I think so. I may be a little bit off on that. The availability of civilian car unloaders at present may be slightly under that.

Q. Under 50 per cent?

A. But the factor that makes it difficult for us to get labor is the price that we pay. If we raised the pay we could get more men.

Q. Of course, the railroads would be freer, I suppose, to pay an unlimited wage scale, more so than the Army.

You spoke of Army personnel coming in at peak periods. I was wondering whether or not the peak periods are not almost the normal periods?

A. Not quite, but they come rather frequently.

51 Q. So that the peak period that you speak of would be something that would be happening frequently: is that true?

A. Yes, that would happen frequently.

Mr. WINN. That is all.

Q. (By Exam. Disque). At these other Norfolk piers where the allowance is made, does the terminal or the unloading agency unload according to the needs of the ships or according to the railroads desires, or do you know how it is handled?

A. It is a confused situation. The terminal company unloads for the United Nations Depot; the Army freight that we handle over the piers for export the Army handles with soldier labor chiefly.

Q. Do you know how it is handled at these other Norfolk piers where the allowance is made? Is not an allowance made out here at Lambert Point?

A. Yes, sir. The car unloading at Lambert Point is done by civilians and in certain cases by military personnel or naval personnel. I am not competent to testify as to the details of that.

Exam. Disque. All right.

Are there any other questions?

Mr. MACGUINEAS. I have a few on redirect examination.

Exam. Disque. All right.

That is all on cross.

Re-direct Examination.

52 Q. (By Mr. MACGUINEAS). Will you for the moment confine your attention merely to the process of unloading the cars from pier track to the floor and disregard the balance of the movement from the pier floor into the ship.

Do you see any reason why, if the carriers organized and coordinated an efficient set up, they can not today perform at the Army Base Piers the function of unloading from car to pier floor?

A. They could.

Q. If they wished to import labor, or to provide civilian labor for that purpose, are you content to have them do so?

A. Yes.

Q. Is it correct, General, to say that substantially all of the freight which is unloaded on Army Base Piers from the cars goes into ships without further being shifted around?

A. Yes, the vast majority, subject, as I testified, to a slight interchange between piers.

Q. But that is—

A. That is minor.

Q. Counsel for the Pennsylvania Railroad asked you certain questions about the handling of wheeled equipment, vehicles, and so forth.

Is it correct to say that the vehicles which are loaded on the ship arrive at the pier already assembled?

A. Yes.

Q. In the sense the wheels are on and the axles?

55

A. Yes, sir.

Q. It is a complete car?

A. Yes, sir.

Q. And the so-called processing about which you spoke merely involves water-proofing those vehicles for safety—

A. To withstand the ocean voyage.

Q. Furthermore, the wheeled traffic, the vehicular traffic, which moves over the base piers arrives in open top cars: is that not so?

A. Not always.

Q. Generally?

A. Generally.

Mr. COUSINS. May I suggest to Mr. MacGuineas that he ask the witness questions instead of telling him?

I do not think he stated any of this information that you have now suggested to him.

Mr. MACGUINEAS. You are free to object to questions if you care to do so.

Mr. COUSINS. Oh, no.

Q. (By Mr. MACGUINEAS). At Army Base Piers 1 and 2, will you or will you not allow commercial import traffic to move over that pier as long as it can be handled with reasonable expedition?

A. I will and have.

Q. Do you recall the date of the commercial movement to which you testified, which consisted of Red Cross clothing? Can you give us the approximate date of that?

A. It was in November, 1943.

Q. To clarify your testimony about the importation in the Luckenbach ship which you said involved spices and different materials which had to be classified, where did that ship dock?

A. No. 4, Newport News, North Side.



Q. Do you know what railroad is presently doing the car unloading at Baltimore?

A. The B & O, Pennsylvania, and Canton.

Q. And, General, when you were discussing the relative force of civilian and Army labor that has been listed recently, were you referring to the port of embarkation as a whole, or were you specifically referring to Army Base Piers 1 and 2?

A. Army Base Piers 1 and 2.

Mr. MacGUINEAS. That is all.

Re-cross Examination.

Q. (By Mr. COUSINS). General, what piers in Baltimore were you talking about?

A. Pennsylvania Pier No. 1.

Q. Pennsylvania Railroad Pier No. 1?

A. Pennsylvania Pier No. 1, the Canton Railroad piers, and the B & O piers.

Mr. COUSINS. That is all.

55 Q. (By Mr. WINN). When you spoke on re-direct examination to the effect that the railroads unloaded the cars and placed the freight on the pier floor, did you mean placed the freight on the pier floor next to the car, or were you speaking of the full operation, unloading the car and moving it to shipside?

A. Putting it on the floor of the pier.

Q. Convenient to the car from which it is taken?

A. We instruct them to stop the cars at certain places. A cut of cars would be placed adjacent to the ship, that those cars were allocated to.

Q. Adjacent to the ship?

A. No, of the pier, on the section of the pier adjacent to the ship. If the ship were on the offshore berth, the south-side; why the cars would be unloaded on the offshore end of the pier on the south side.

Q. What work is there to be done in moving the freight from the point at which you had it placed by the railroads on the pier floor and the tackle point, the ship's line point?

A. If our plan is good we unload the cars reasonably near the hatch that the cargo is going into. We are not always successful in that. If we do not do that, you have a cross current of traffic, and we try, in our allocations, to determine before we order the cars in, before they are unloaded, we try to determine what hatch the freight is going into.

Q. I just could not quite understand your saying

56 that the railroads could do this work of unloading when you have explained to us that in order to do it you used half soldier personnel.

A. It is possible to get additional personnel.

Q. Civilian personnel?

A. Civilian personnel.

Q. But you have not been able to get it?

A. I have not been able to.

Q. Have you sought to?

A. Yes, sir.

Mr. WYNN. That is all.

(Witness excused.)

Mr. WAGNER. Mr. Examiner, I desire to offer a petition of intervention on behalf of the Richmond Chamber of Commerce, the State Port Authority of Virginia, and the Norfolk Port Traffic Commission.

Exam. DISQUE. If there is no objection it will be filed.

Mr. REYNOLDS. Would Mr. Wagner mind stating his position?

Mr. WAGNER. I would not, but the petition states it.

Exam. DISQUE. Your position is similar to that of the other interveners?

Mr. WAGNER. I do not know because, unfortunately, I was not here when they intervened.

Exam. DISQUE. It does not broaden the issues, does it?

Mr. WAGNER. It does not.

57 Exam. DISQUE. That is all I care to know now. Proceed.

Mr. MACGUINEAS. Mr. Examiner, I offer in evidence Complainant's Exhibits No. 1 and No. 2, heretofore marked for identification.

Exam. DISQUE. They will be received in evidence.

(Complainant's Exhibits 1 and 2, Witness Kilpatrick, received in evidence.)

HAYS M. HEIMBAUGH was sworn and testified as follows:

Direct Examination.

Q. (By Mr. MACGUINEAS). Major Heimbaugh, please state your name and official position.

A. My name is Hays M. Heimbaugh. I am a Major in the Transportation Corps, Army of the United States, assigned to the Office of Chief of Transportation, Traffic Control Division, Freight Branch, Rate Adjustment Section.

My duties involve negotiating with the carriers for changes in rates, rules, regulations, and practices, either by voluntary adjustment or by proceedings before the Interstate Commerce Commission or regulatory bodies.

Q. When did you join the Army, Major Heimbaugh?

A. I was commissioned initially on June 10, 1928. I have held a reserve commission since that time.

Q. When did you assume active service in the present war?

A. I came on active duty in this war on the 25 September 1942.

58 Q. Prior to that time, what was your occupation?

A. I was with the Rock Island Railroad for fourteen years in the freight traffic department, the last seven years of which I represented the Rock Island on various committees in which the Rock Island was interested, including Western Trunk Line Territory and on Western Trunk Line I was the Rock Island alternate representative.

Q. To what extent did your work on the Rock Island deal with freight tariffs?

A. I dealt with that entirely.

Q. Major Heimbaugh, have you prepared an exhibit which shows the line haul tariff now in effect covering export, import, coastwise and intercoastal traffic moving through Norfolk, Virginia?

A. I have. It is the exhibit that has the letter "A" up in the left hand corner.

Q. In red pencil?

A. In red pencil, I believe.

Mr. MacGUINEAS. May we have this identified as No. 3: (Complainant's Exhibit 3, Witness Heimbaugh, marked for identification.)

Q. (By Mr. MacGUINEAS). Major Heimbaugh, will you point out for the record the particular portions of your exhibit which are especially applicable to the claimant's contentions here and discuss them?

59 A. In general, this exhibit contains the provisions in the tariffs from the major rate territories, from each of the major rate territories, from or to which export and import rates are published through Norfolk.

The exhibit does not purport to refer to every tariff that publishes rates of that kind, but to the extent that the tariff does contain excerpts concerning the application of those rates the representations for the tariffs referred to are a full representation.

From some territories, such as transcontinental territory, for instance, for which export rates are not published into Norfolk, we have not included in here any items relating to the application of the transcontinental rates east-bound.



I think you will understand as we proceed through the exhibit what the general plan of the exhibit is.

The first tariff referred to is trunk line tariff '80-C, Curlett's I. C. C. No. A-694. Referring to Item 100-C beginning on page 4, that states the application of import rates. In other words, it sets forth the conditions that will prevail in order to obtain the application of import rates as named in that tariff.

It states: "Import rates named herein will apply on property delivered to the rail carrier direct from shipside or dock of vessel."

60 Q. What page is that?

8 A. It starts at the bottom of page 4 and I finished reading at the top of page 5.

Exam. DISQUE. There are two numbers on each page.

Mr. MACGUINEAS. May I state for the record, in all cases the printed number is to be ignored.

The WITNESS. Pay no attention to the number in the lower corner. That has nothing to do with the numbering of the pages. That, in brief, is the way our import and export traffic is handled. It is handled direct in bringing the property to Norfolk.

Q. (By Mr. MACGUINEAS). Is there any reference in this tariff to traffic handled over Army Bases?

A. There is. On page 6 of the exhibit you will find Item 110-C reproduced and in the next to the last paragraph of that item you will find this:

"Export rates will also apply on shipments consigned on bills of lading for export, destined to foreign countries or foreign possessions of the United States, handled through United States Navy Yards, Naval Bases, or Army Bases, or delivered to United States Government vessels docked thereat on presentation of proper evidence of exportation."

Our export shipments through Army Base Piers 1 and 2 went through these Army facilities and regardless of whether they moved through Army facilities or not are indicated as being for export on the bill of lading and there is evidence of exportation given the carrier as set forth in the paragraph I just read.

61 Army Base Piers 1 and 2 are a part of the Army Base here at Hampton Roads Port of Embarkation.

Now, we move over to page 9 of the exhibit and the last paragraph on that page contains the item practically the same as the one I have read. This item appears in Jones' Tariff I. C. C. No. 3642. That tariff contains export rates from Central Freight Association territory.

Exam. DISQUE. Since they are charging export rates, what is the purpose of showing this?

The WITNESS. This conforms to the allegations made in the complaint respecting the existence of export rates.

Let me take you back to page 3 of the exhibit. In the first paragraph there is shown Item 30-A. This relates to Curlett's Tariff No. 80 which provides for export rates from origins in trunk line territory and it states:

62 "The class rates published herein for application on import, export, intercoastal and coastwise traffic take precedence over other class rates between the same points via the same routes. From and to points shown on pages 7 to 32, inclusive, of tariff, as amended from and to which no import, export, intercoastal and coastwise rates are specifically published herein, the class rates published on domestic traffic in other tariffs lawfully on file with the Interstate Commerce Commission from and to such points will apply on import, export, intercoastal and coastwise traffic and will be subject to rules and application of rates as published herein governing import, export, intercoastal and coastwise traffic."

So if it is found necessary from an origin in trunk line territory to supply the domestic class rate to Norfolk, they do apply on shipments exported through Army bases.

Turn, please, to page 16. That contains again the provisions relating to export shipments through Army bases published in C. F. A. Tariff 218, I. C. C. No. 3758, which is a tariff that contains the commodity rates.

On page 18 we have a similar application in trunk line tariff 107-C series Curlett's Tariff, current I. C. C. Nos. 107-B—that should be I. C. C. No. A-593 and A-767, which applies from and to stations in western trunk line territory.

It will be noted as you go through the exhibit that the provisions that are in effect now are the provisions that were in effect at the time the Army took over the operation at the Army Base. In other words, no change has been made in these tariffs in so far as the line haul charges are concerned to compensate for the work that is being done by the Army and for which no allowance is currently being made.

Q. (By Mr. MacGUINNESS). Major Heimbaugh, does Curlett's Tariff No. 107 contain any specific provision with reference to traffic handled over Army Bases?

63 A. It does. That is the bottom paragraph, the paragraph shown at the bottom of page 18.

On page 23, we have the application shown in Western Trunk Line Territory, L. E. Kipp's Tariff I. C. C. No. A-3472, which names rates from origins in western trunk line territory to Norfolk and other North Atlantic ports.

Here is an item which says:

"Under the application of shipside rates, rail lines will make no allowance or payment for transferring freight directly between ships and open top cars by ship's tackle, ship's stevedore, or ship's contract labor, alone or in conjunction with mechanical or other facilities."

That is a clear implication as to box car traffic that the shipside application does include the performance by the carriers themselves of this unloading to the pier floor or for an allowance therefor.

The application in this tariff also indicates that the same provisions are applicable at other North Atlantic ports, including Baltimore, to which the General referred, where the carriers are unloading the car.

Turn to page 29, please. We have on page 29 the beginning of the provisions found in Southern Freight Association Freight Tariff 712-C, Hoke's I. C. C. No. 712, Item 130 and dropping down to the large paragraph, it says:

64 "If the charges accruing under the rail-water or all-rail rates applicable via Norfolk," and the other ports named therein, "to Baltimore, Maryland, as published in tariffs listed in Item 135 are lower than the charges accruing under the rates to Norfolk \* \* \* published in this tariff, as amended, plus wharfage and handling charges applicable at said Virginia Ports as published in R. H. Hoke Tariff 326-F, the lower charges resulting from such rates to Baltimore, Maryland, will apply to shipside at Norfolk."

Exam. Disque. What page are you reading from?

The Witness. Page 29.

This application is different from the ones we referred to heretofore. This tariff applies from certain stations in Southern Freight Association territory and has shipside application when certain conditions prevail.

While you keep that place at page 29, turn, please to page 43. Down at the bottom of page 43 and at the top of page 44 are some rates, both all-rail and all-water, as found in Agent Hoke's I. C. C. No. 712 from Army Depot, Georgia, to Norfolk, Virginia, and on page 44, the rates from Army Depot, Georgia, to Baltimore, Maryland, both all-rail and



65 rail-water to Baltimore. You will notice that the all-rail class rates in effect now and in effect on June 14, 1942, from Army Depot, Georgia, to Norfolk, Virginia, are the same as the rail-water rates from Army Depot, Georgia, to Baltimore, Maryland, and these rail-water rates still apply to Norfolk, namely, rail line to Norfolk and water line beyond. They are published in Agent Hoke's I. C. C. 8, which is one of the tariffs.

Refer to Item 35, page 29. In other words, as to shipments which would move on class rates from Army Depot, Georgia, to Norfolk, the rate being published in Hoke's I. C. C. 712, such a rate would be actually shipside rate, calling for shipside delivery at the Army Base, for instance, in Norfolk.

Q. (By Mr. MacGUINEAS). May I interrupt? Will you explain on the record the significance of your symbols "EP" and "E-42"?

A. They are described at the bottom of page 41. EP means export rate in effect at present. E-42 means export rate in effect on 14 June 1942.

DP means domestic rate in effect at present.

D-42 means domestic rate in effect 14 June 1942.

AR is all rail; and RW is rail water.

I may say that throughout these exhibits we have not included the *Ex Parte* 148 increases. This application found in Item 130 of Hoke's 712 appears in the SFA Class Rate Tariff generally applying to Norfolk.

66 Turn to page 33, please. Next to the last paragraph, page 33, the one numbered 4, contains provisions found in S. F. Tariff 705-F, Hoke's Tariff I. C. C. No. 903, which is a commodity tariff applying from Southern Freight Association Territory and publishes export rates.

That paragraph, you will notice, is the paragraph providing for the export application on shipments moving through Army bases.

Turn to page 35, the very first sentence at the top of the page. We are still in the same tariff, Hoke's I. C. C. 903. Except as otherwise provided in this tariff, rates published in this tariff do not include wharfage, handling or other charges necessary to affect delivery to shipside.

However, turning over to page 36, you will find reproduced a couple of items which are typical of many in the tariff and right in the item there is provision that it is applicable to shipside. I might say that this shipment of steel articles referred to moved on the rates found in Item 780 reproduced on page 36.

Q. Have you finished your answer on those tariffs, Major Heimbaugh?

A. Yes, sir. That is all.

Q. Do the tariffs to which you have referred contain the omnibus clause making applicable the provisions in terminal tariffs?

A. They do. There is the cross reference to the omnibus clause by item numbers as shown on page 37.

Q. Major Heimbaugh, have you also prepared an exhibit which contains excerpts from the applicable terminal tariff at Norfolk?

A. I have.

67 That is the exhibit with the small "b" in the upper right hand corner.

Mr. MacGUINEAS. This will be identified as Exhibit No. 4. (Complainant's Exhibit 4, Witness Heimbaugh, marked for identification.)

By Mr. MacGUINEAS. Will you also refer briefly to the applicable provisions in those tariffs with reference to export and import traffic charges and allowances?

A. This exhibit contains excerpts from the tariffs of the Norfolk carriers other than the C. & O. Railroad relating to allowances or absorptions for accomplishing shipside delivery or more specific for wharfage and handling and other services at Norfolk.

Turn, please, to page 10. This contains excerpts from Atlantic Coastline Tariff I. C. C. No. B-3063. The item designated as "(a)" states that "in the absence of through rates or specific charges, on coastwise traffic via the Atlantic Coast Line Railroad to Brunswick, Georgia; Charleston, South Carolina; Jacksonville, Florida; Norfolk, Virginia; Pimmers Point, Virginia; Richmond, Virginia, and Savannah, Georgia, inland domestic rates will apply to shipside when originating at points in the following States" and so forth.

You will note that refers to coastwise traffic. The Coast Line in its terminal tariff has no corresponding item relating to export traffic or import traffic. The Atlantic

68 Coast Line relies for any shipside application on the specific application in the line haul tariffs, such as Hoke's I. C. C. 903.

Refer to page 12. This contains the provisions found in Norfolk & Western Railway Tariff I. C. C. No. 9179, Railroad Tariff No. 23-F.

In Section 6 of that tariff, Part 1, are found specific provisions relating to the Lincoln Tidewater Terminals, other

wise known as United Nations Depot No. 9. This same part of the tariff up until 15 September 1942, contained similar specific reference to Transport and Trading Terminal Corporation, which operated the Army Base Piers Nos. 1 and 2.

Q. Until what date?

A. The Transport and Trading Terminal is taken out of this particular tariff effective 15 September, 1942.

Q. Until what date did Transport Trading and Terminal operate Base Piers Nos. 1 and 2?

A. Until 15 September, 1942. In other words, the Transport Trading and Terminal continued in this tariff after the Army commenced the operation.

These provisions say that on traffic originating at or destined to points designated on page 13 of the tariff, subject to Sections 1 and 3 of the tariff—and the description of these Sections 1 and 3 will be found in the first nine pages

of this exhibit—when originating at or destined to points designated on page 13 of the tariff the Norfolk & Western Railway will absorb in the line-haul rates wharfage charges of one cent per hundred pounds on all freight, also a handling charge of 3 cents per 100 pounds or 60 cents per ton, net or gross, on all freight inclosed cars.

There is there a more specific allowance named with respect to certain classes of traffic. I simply call attention to the fact that they do make absorptions in the line-haul rate of one cent per 100 pounds for wharfage on all freight and 3 cents per 100 pounds on freight inclosed cars, in addition to the wharfage, the 3 cents being for handling.

Q. Will you make a brief statement as to the manner in which you have set up pages 3 to 9, showing the territorial application?

A. Take page 12, in the first line, it refers to Sections 1 and 3 of the tariff. Suppose we have some traffic coming from Chicago. You will refer to the first nine pages, running down the left hand column until you come to Illinois. You will then find under the first column opposite "Illinois" a (1). That is the section number shown, the one referring to Norfolk in Western Tariff I.C.C. No. 9179.

In other words, Chicago would be a Section 1 station in so far as this application referred to on page 12 of the exhibit is concerned.

Does that sufficiently explain it?

70 I may say that in general the terminal tariffs fall into three groups. One group is the Atlantic Coast



Line and seaboard which have this very limited application of the terminal tariff dealing with coastwise traffic only.

Then there is the Pennsylvania which has no restriction as to a certain type of traffic. In other words, the Pennsylvania Terminal Tariff applies to export, import, coastwise and intercoastal. It also has no restriction concerning the origin or destination stations.

Then there are tariffs for the other lines, of which the N. & W. is representative, which limit the full absorption of 1 to 3 cents, according to the origin point of the traffic on export shipments and the destination on import shipments, inbound, I should say, and in general that restriction means that to destinations other than Southern Freight Association Territory, from which no absorption as a rule is made in the terminal tariff, the allowance of one and three cents will be made excepting for border points and by "border" I mean stations located on the border between Official and Southern territories, and which are grouped in the N. & W. tariff as Section 2 stations. These are all stations on the C. C. & O. in Kentucky, which are group 2 stations. There is a limited absorption from these border line stations.

Q. You stated that the N. & W. Terminal Tariff until September 1943, made specific references to the Transport Trading and Terminal Corporation.

A. That is correct.

Q. Will you make a statement with respect to the provisions of the other terminal tariffs in that connection?

A. Will it suffice if I refer to them as I come to each of them?

Q. Yes.

A. The Examiner inquired about Lambert Point dock. The absorptions are found on page 13 for that facility.

Turn, please, to page 17. Beginning on page 17 we have provisions published by the Norfolk & Southern Railroad Company in its Tariff I.C.C. A-1148. Specific provisions relating to the Lincoln Tidewater Terminals are found in Rules 170 and 175, shown on page 17. Specific reference to Lambert Point dock is shown on page 18.

Q. What was the facility operated by the Tidewater Terminal known as?

A. That is known as United Nations Depot No. 9. Also in the list of facilities where Lambert Point dock is named, page 18, you will notice at the bottom of the lines, over on the right hand side, there is a C-2 reference, which is explained at the bottom of page 19. It says:

"Transport Trading and Terminal Corporation, formerly shown in this rule is hereby cancelled. No longer in operation."

72 That change was made by the Norfolk-Southern effective 18 November, 1943.

The publications on pages 17 and 18 are under the general statement made by the Norfolk-Southern that: "when rates from Norfolk, Virginia, on import traffic are published to apply from shipside the Norfolk-Southern Railroad Company will absorb wharfage and handling charges published and lawfully on file with the Interstate Commerce Commission necessary to cover transfer from shipside to cars, on traffic for movement from Norfolk, Virginia, via Norfolk-Southern Railroad Company."

Exam. DISQUE. What page did you read that from?

The WITNESS. Page 17. That is Rule 170.

Q. (By Mr. MacGUINEAS). Proceed.

A. On page 19 we find provisions relating to the matter of allowances made by the Norfolk-Southern. This is applicable at Lincoln Tidewater Terminals, otherwise known as United Nations Depot No. 9. It says:

"For the use of wharves, warehouses, slips, channels, tracks and approaches, and other facilities at the terminals as listed in this rule, and for other services rendered by the terminals listed in this rule; as agent for the Norfolk-Southern Railway Company, the Norfolk-Southern Railway Company will make an allowance equal to the amount of charges as provided in Agent Hoke's Freight Tariff No. 326-G, I.C.C. No. 834."

73 That is the Southern Freight Association Terminal charges tariff.

Turn, please, to page 20. Beginning on page 20 we have the provisions published by the Pennsylvania Railroad Company in its Tariff No. 2613.

The Pennsylvania Railroad Company currently publishes in its tariff Item No. 305, which relates to the Transport Trading and Terminal Corporation that operated Army Base Piers Nos. 1 and 2 until June 15, 1942.

Item 305 states: "Any charge of the Norfolk and Portsmouth Belt Line Railroad Company for wharfage, storage, loading, unloading, handling, transferring, or any service whatever at the Transport Trading and Terminal Corporation, as per Norfolk and Portsmouth Belt Line Railroad Company Tariff 6-J, I.C.C. 105, will be in addition to the rate to or from Norfolk, Virginia, except that on export, im-

port, coastwise and intercoastal traffic, any quantity, on which the freight rate is not less than 10 cents per 100 pounds, or \$2.00 per ton, wharfage charge of 1 cent per 100 pounds and handling charge not to exceed 3 cents per 100 pounds or 60 cents per ton, will be included in the freight rate to or from Norfolk, Virginia, with the following exceptions," which are very limited in their application.

The Pennsylvania publishes a similar provision at Lincoln Tidewater Terminals, otherwise known as United Nations Depot No. 9.

On page 21 of the exhibit, we find provisions published by the Pennsylvania Railroad relating to shipments moving over the Lambert Point dock. As to both Lincoln Tidewater Terminal and Lambert Point dock, the Pennsylvania tariff states that these 1 and 3 cent sums will be included in the freight rate when the Pennsylvania Railroad Company assesses a charge of 10 cents per 100 pounds or more or \$2.00 a ton or more.

Mr. COUSINS. Where does it show on page 20 that that last item means United Nations Depot?

The WITNESS. The Pennsylvania tariff does not say "United Nations Depot."

Mr. COUSINS. You just added that yourself?

The WITNESS. That is right, as explanatory, to indicate that the Lincoln Tidewater Terminals as referred to in this item is operating the facilities generally described as United Nations Depot No. 9. We referred to it at one time as Sewalls Point Piers, I believe.

On page 23 of the exhibit is the initial publication made by the predecessor company of the Pennsylvania Railroad respecting the allowances that were made at that time for the operator at Army Base Piers 1 and 2.

You will note the 1 and 3 cent sums were published then and they have continued since that time. The Army supply bases referred to are specifically referred to by name.

On page 24 is where we begin the provisions relating to the Seaboard Air Line Railroad Company and they are substantially the same as described earlier for the Atlantic Coast Line Railroad and relate only to coastwise traffic.

On page 26 is found the beginning of the provisions published by the Southern Railway System. The last sentence on page 26 just above the table of wharfage and handling charges states:



"Unless otherwise specifically provided in tariffs, the terminal charges shown below must be deducted before pro-rating."

Those charges are shown in some detail.

We can go to page 32 now which continues provisions published by Southern Railway, where is stated the Lincoln Tidewater Terminals, which again is the organization operating the United Nations Depot No. 9, and there are also found provisions for Transport Trading and Terminal Corporation, which formerly operated Army Piers 1 and 2. The 1 cent and 3 cents will be included in the transportation rate on traffic to and from Norfolk. This tariff, like the N. & W. tariff, is subject to this group outlined in detail in the first nine pages of the exhibit as to absorption territory and the non-absorption territory.

The Lambert Point dock absorption provision is found on page 33 of the exhibit.

Page 34 contains provisions in the terminal tariff published by the Virginian Railway Company in its Tariff, I.C.C. No. 2196.

76 The Virginian publishes wharfage and handling allowances specifically as to shipments moving over Lincoln Tidewater Terminals and Transport and Trading Terminal Corporation, which are United Nations Depot and Army Base Piers 1 and 2, respectively.

The Virginian tariff also refers to the absorption and non-absorption territories as to origin on export and the destinations on inbound shipments.

On page 37 begins the provisions published by the Norfolk and Portsmouth Belt Line Railroad Company. You have noticed in going through the exhibit that as to Lincoln Tidewater Terminals and Transport Trading and Terminal Corporation, the road haul carriers refer to the charges published by the Norfolk and Portsmouth Belt Line Railroad as setting the amount of the absorption that they make.

We show in this exhibit the charges published by the Norfolk and Portsmouth Belt Line Railroad from the absorption territory. We have not undertaken to reproduce the tariff as to non-absorption territory, because that runs on for quite a number of pages.

In addition to setting forth the wharfage, handling, and other charges for Norfolk and Portsmouth Belt Line Railroad Company at Norfolk, Item 100-B shown on page 37 of the exhibit states:

77 "For the use of wharves, warehouses, slips, channels, tracks and approaches and other facilities at

the Lincoln Tidewater Terminals, Inc., and/or Transport Trading and Terminal Corporation, Norfolk, Virginia, and for other services rendered by the Lincoln Tidewater Terminals, Inc., and/or Transport Trading and Terminal Corporation, as agent for Norfolk and Portsmouth Belt Line Railroad Company, the Norfolk and Portsmouth Belt Line Railroad makes an allowance, equal in the amount of charges provided in this tariff, or as amended, to the Lincoln Tidewater Terminals, Inc. and/or Transport Trading and Terminal Corporation," with the specific exceptions on lumber that prevail generally.

You will notice that the Norfolk and Portsmouth Belt Line continue to refer to Transport and Trading. In fact, in Carrier's Exhibit 2, they show Transport Trading and Terminal in their tariffs:

Q. (By Mr. MACGUINEAS). And still do at the present time?

A. Right, all but two, I think.

Q. Major Heimbaugh, does your exhibit indicate for how many years these absorption and allowance provisions have been in the various terminal tariffs serving Norfolk?

A. On pages 45 and 46 of the exhibit there is shown the names of the organizations that have operated Army Base Piers 1 and 2 as they have appeared in the tariffs of various Norfolk lines, together with the dates during which the various operators were shown in the tariffs.

78 Q. You will notice that an absorption and allowance provision has been published for the operators back to the early part of 1921. There has been no break.

Q. Major Heimbaugh, have you also prepared an exhibit which shows illustrative shipments of commodities over Army Base Piers 1 and 2 since June 15, 1942?

A. I have. That is the exhibit that has the small "e" in the upper left hand corner.

Mr. MACGUINEAS. May we have this identified as Complainant's Exhibit No. 5?

(Complainant's Exhibit 5, Witness Heimbaugh, marked for identification.)

Q. (By Mr. MACGUINEAS). Explain that exhibit, please.

A. This exhibit shows the illustrative shipments, giving the name of commodity, point of origin, actual weight or minimum weight, whichever is greater, the rate that was applied and also the rate if such a movement had taken place since 14 June, 1942, what the freight charges are for

the weight that moved, and it also shows the extent to which those charges would be reduced if the freight had been trans-shipped to vessel for export over Lambert Point docks and over Lincoln Tidewater Terminal, and there is a column for Army Base Piers Nos. 1 and 2. Where the shipments moved in open top cars that is shown under the column "Remarks." That is on the lower right hand side.

You will recall that absorption and allowance provisions provide for one cent on all freight and three cents only on the box car freight or, rather, the closed car freight.

I may say on page 2 of this exhibit, while shipments from origins in Southern Freight Association territory generally are considered together from non-absorption territory, you will note two out of the three shipments, namely, the trailers from Army Depot, Georgia, and the salmon, from Savannah, Georgia, were subject to the absorption allowance provisions and in both cases it happens that the Baltimore maximum application brought into play the shipside provisions of the tariff that named the rate.

The orange juice from Tampa, Florida, moved on a commodity rate which was considerably lower than any class rates and the wharfage and handling, when added thereto, would produce charges well under the Baltimore rate.

Q. Major Heimbaugh, does one of your exhibits contain excerpts from the applicable provisions of the tariff to other North Atlantic ports with reference to absorption and allowance, handling and wharfage?

A. Yes. That is the exhibit that has been designated as No. 4, the one we were talking about prior to the last one.

Q. Will you make an explanation as to those references, please?

A. Beginning on page 17 (Exhibit 4), there is an excerpt from the Pennsylvania Railroad Company tariff applying at Baltimore, Pennsylvania Railroad Company  
80 Tariff I.C.C. 2685, in which it states that the freight rate will include loading from lighters or platform of piers under cover to cars or from open piers to box cars, or unloading from cars to platform of piers under cover or to lighters or from box cars to open piers, with the exceptions shown on oil and lumber.

I may say at Baltimore, supplementing the General's testimony, wherein he stated that the carriers unloaded the cars at Baltimore, which is true as to carload traffic, that the Army is unloading l.c.l. freight at Baltimore and the carrier is paying for it.



As to payment from the Canton Railroad, I can refer to check No. 26940, dated April 3, 1944, drawn on the Mercantile Trust Company, Baltimore, which was in payment for labor of unloading cars of merchandise and was a check for \$728.54.

Page 49 is excerpt from Pennsylvania tariff applying at Wilmington, Delaware, which states again that the rate will include loading from piers to cars or unloading from cars to piers at Wilmington Marine Terminal, Wilmington, Delaware.

Page 51, Item 395, states that the rate will include loading from piers to cars or unloading from cars to piers on both carriers' piers and other public piers operated by steamship companies, pier companies, city of Philadelphia, Pennsylvania, city of Camden, New Jersey, or individuals, excepting piers controlled by the owners of the traffic.

The Army is moving through Baltimore. There is a terminal operator there, and through him the Army receives \$1.17 a ton for the work of unloading the cars.

Q. Do you not mean Philadelphia?

A. Philadelphia, yes, sir.

Mr. COUSINS. Stay right there just a minute.

The WITNESS. All that I read was what I was reading from Item 395 shown on page 51.

Q. (By Mr. MACGUINEAS). Major Heimbaugh, will you please repeat the statement that you made with reference to the allowances at Philadelphia by the carriers.

A. At Philadelphia?

Q. At Philadelphia.

A. The freight is unloaded from the car to pier for export movement in so far as the Army is concerned through the terminal operator, and the Army receives an allowance of \$1.17 a ton for this Philadelphia operation.

Mr. COUSINS. From whom?

The WITNESS. From the Pennsylvania, among others.

Mr. COUSINS. I am not trying to cross examine you now, Major Heimbaugh, but it seems to me your answers are not clear.

The WITNESS. I will be glad to clarify them.

Mr. COUSINS. What are you talking about, who is the terminal operator, what pier, who gives you the allowance?

Mr. MACGUINEAS. I think we better reserve questions like that for cross examination.

82 Mr. COUSINS. I am willing to do that but if I have to go back on these details, it is going to take a lot of time to cross examine and all I am after is a little qualification.

The WITNESS. The terminal operator at Philadelphia is the Norfolk Tidewater Terminal.

Mr. COUSINS. What pier? Just make it clear.

I am not trying to contradict you.

The WITNESS. I can not name the pier for you at Philadelphia. I am not familiar with the Philadelphia harbor sufficiently to designate the piers as I would designate Army Base Piers 1 and 2.

Mr. COUSINS. What was the name of that operator?

The WITNESS. Norfolk Tidewater Terminal.

Mr. COUSINS. That is Philadelphia?

The WITNESS. Right.

On page 53 of this exhibit are reproduced two items from the New York harbor tariff, Agent Curlett's I. C. C. A-788.

Item 2525 states: "On import, export, intercoastal or coastwise traffic, rates to or from New York, including free lighterage on articles entitled to free lighterage, will include loading or unloading of lighters, barges, or cars on car floats in lieu of lighterage at place of receipt or delivery by these companies, except as otherwise provided in this tariff."

The item does not—or rather, the exhibit does not contain Item 4135 and Item 4140 of that tariff; however,

83. Item 4135 states:

"An allowance of 15 cents per ton of 2,000 pounds or 2,240 pounds, as rated, will be made to consignors and consignees within lighterage limits for loading or unloading lighterage free freight, including less than carload freight, and lightered in accordance with rules governing the lightering of such freight to and from carrier's lighters or barges when such service is performed by consignors or consignees."

Exam. DISQUE. What page have you just read from?

The WITNESS. I explained that was not in the exhibit. That is Item 4135 of the New York Harbor Lighterage Tariff. Item 4140 states that allowances will be made on export, import, intercoastal or coastwise traffic.

Q. (By Mr. MacGUINEAS). Before you proceed to the next exhibit, your statement was that at Philadelphia you understood the terminal operator to be whom, at Philadelphia?

A. Norfolk Tidewater Terminal.

Mr. COUSINS. That is what he said before. You said "Norfolk Tidewater Terminal".

The WITNESS. There is not, correct. I should have said Lincoln Tidewater Terminal.

Mr. COUSINS. Are you sure?

The WITNESS. I should have said Lincoln Tidewater Terminal.

Mr. COUSINS. At Philadelphia?

84 The WITNESS. At Philadelphia, that is right, as well as here.

Q. (By Mr. MACGUINEAS). Now, continue.

A. Page 54 relates to the provisions published in Boston by Agent I. N. Doe's Tariff I. C. C. No. 424.

Going to page 56. Rule 60 refers to the absorption made by the Boston and Maine Railroad. Rule 95 refers to the absorption made by the Boston and Albany Railroad and both of those refer to Item 65 of the tariff which provides for an amount of 66 cents per ton.

On page 57 are the provisions relating to the New York, New Haven and Hartford Railroad Company. That also refers to Item 65 which contains the 66 cents per ton.

Q. Major Heimbaugh, do you know whether at the present time at the Port of New York, the Army is receiving allowances for the performance of car unloading service?

A. It is.

Q. Do you know at what rate?

A. 23 cents per ton.

Q. And is the Army actually receiving allowances from the carriers for the performance of unloading services at Boston?

A. It is.

Q. At what rate?

A. The rate varies. The New York, New Haven and Hartford makes an allowance of 66 cents per ton, the Boston and Albany 50 cents, and in addition to that the

85 Boston and Albany, the Boston and Maine, and the New York, New Haven and Hartford allow 80 cents per ton on export freight loaded in open top cars moving under Government bills of lading placed on designated tracks at Boston, East Boston, Massachusetts, for delivery to lighters or barges in lieu of placement on steamship pier when the United States Government unloads the cars to lighters or barges and lighters or barges such traffic from rail heads to shipside.

Mr. COUSINS. Will you tell what you are reading from?



The WITNESS. This last one is not in the exhibit. I am reading from Section 22 quotation.

Q. (By Mr. MACGUINEAS). Major Heimbaugh, since June 15, 1942, have the carriers been making allowances for the performance of car unloading services at United Nations Depot?

Mr. COUSINS. Objected to on the ground this witness has not qualified himself to answer the question.

Q. (By Mr. MACGUINEAS). Do you know whether or not such allowances have been and are being made at United Nations Depot?

A. I know.

Mr. COUSINS. How do you know?

Q. (By Mr. MACGUINEAS). Will you state what those allowances are?

Mr. COUSINS. How do you know? What have you got to do with it?

The WITNESS. I have examined the Army records.

Mr. COUSINS. Whereabouts?

86 THE WITNESS. In Washington and in Norfolk.

Mr. COUSINS. All right.

Q. (By Mr. MACGUINEAS). Will you answer the question, please?

A. For security reasons I will not give you a full statement. These are payments selected at random for the various carriers for the months indicated, which were payments for the wharfage and handling allowances on traffic moving over United Nations Depot No. 9, designated in the tariffs as Lincoln Tidewater Terminals, Inc.

Mr. COUSINS. Just a minute. By that statement you are referring to what you said to me, that Lincoln Tidewater Terminals is shown in the tariff and you take that to mean the United Nations Depot?

The WITNESS. It is common knowledge that is what it is.

Mr. COUSINS. You said "designated in the tariffs," but there is not anything in the tariffs that so designate it.

Mr. MACGUINEAS. I object to the cross examination.

The WITNESS. It is designated as Lincoln Tidewater. Checks have been so made and I have seen the checks.

Mr. COUSINS. I am pointing out to you that you said that the tariffs designate this thing as United Nations Depot.

The WITNESS. No.

Q. (By Mr. MACGUINEAS). Did you make any such statement as that?

87 A. I said "United Nations Depot," which is referred to in the tariff as Lincoln Tidewater Terminals.

Q. Give us the illustrative list of payments.

A. Payment made by the Norfolk-Western for the month October, 1942, \$6,397.29.

Payment made by the Pennsylvania Railroad for June, 1943, was \$96.22.

Payment made by the Virginian for April, 1943, was \$3,280.39.

Payment made by the Atlantic Coast Line for May, 1943, was \$544.68.

Payment made by the Southern for August, 1942, was \$3206.82.

Payment made by the Norfolk-Southern for March, 1943, was \$627.82.

Mr. COUSINS. All payments being to Lincoln Tidewater Terminals?

The WITNESS. Right.

Q. (By Mr. MACGUINEAS). In what form were those payments made?

A. By check.

Q. Of the respective carriers?

A. Yes, sir.

Q. Do you know what Lincoln Tidewater Terminals did with those checks?

A. They were endorsed on the back "Pay to the Order of the Treasurer of the United States," and signed "Lincoln Tidewater Terminal Corporation."

88 Q. Do you know whether those checks were actually collected by the United States?

A. They were.

Mr. COUSINS. What did you say?

The WITNESS. They were.

Q. (By Mr. MACGUINEAS). Since June 15, 1942, have there been reductions in the line haul rates on export and import traffic moving through Norfolk which compensated for the performance of wharfage and handling services by the Government at Army Base Piers 1 and 2?

A. There have been no general reductions for such purpose.

Q. If the Army traffic which actually moved over Army Base Piers 1 and 2 since June 15, 1942, had instead moved over the Lambert Point dock or over United Nations Depot, would the applicable tariffs have required the government to pay anything in addition to the applicable line haul rate to obtain shipside delivery?

A. No, unless the shipments moved from non-absorption territory, which were not shipside rates.

Mr. MACGUINEAS. That concludes the direct examination.

Exam. DISQUE. We will adjourn until 2:15 o'clock.

(At 12:45 p. m., hearing adjourned until 2:15 o'clock p. m.)

#### AFTERNOON SESSION 2:15 P. M.

HAYS M. HEIMBAUGH, resumed the stand and testified further as follows:

89 Exam. DISQUE. You may cross examine.

Mr. MACGUINEAS. Mr. Examiner, before we proceed with the cross examination, I should like to reserve the right at this time to recall Major Heimbaugh later in the case for further testimony on another aspect which will more logically follow the testimony of other witnesses.

#### Cross Examination.

Q. (By Mr. COUSINS). Major, I want to ask you a few questions about your Exhibit 4.

You mentioned page 23 as showing that certain payments were made as early as 1921 to the Army Supply Base, by which you mean Piers 1 and 2, that we are now talking about; is that so?

A. My testimony was that payment was made to the operator using the facilities known as the Army Supply Base.

Q. You did not mean to suggest that any payment was made to the Army or to any other governmental authority?

A. I did not mean to make such implication.

Q. In 1921 I take it the Army was not operating that base?

A. The base was operated by the operator named in this tariff, named Municipal Piers.

Q. Did the Army operate the base during the last war?

A. I do not know.

Q. You do not know?

A. I have no personal knowledge of the extent to which the Army operated Base Piers 1 and 2 during the last war.

90 Q. Now, you read numerous portions of this exhibit intending to show, I believe, that the absorption of certain charges at Norfolk was provided for in the tariffs of various railroads, but I do not recall that you stated explicitly that in every instance to which you referred to the practice of any railroad, the so-called absorptions were made only on specific piers named in the tariffs.



That is a fact, is it not?

A. It is difficult to make a blanket statement covering all of the tariffs. The wording in the tariffs varies from tariff to tariff.

Q. Look at page 17. That just happens to be the Norfolk-Southern. You read the first paragraph, but you did not refer, as I recall, to Rule 175, which shows where the provision applies.

It is a fact, is it not, that it applies on the piers named on that same page?

A. That is right. Item 175 names the terminals at which the rules and charges published in 180 of the tariff applies.

Q. That is generally true with respect to the tariffs of the other carriers; whereas, you read the statements with respect to absorptions, those tariffs do refer to the definite piers that the absorptions apply to and is not a general statement applicable to any pier in this harbor, is it?

A. I referred specifically in my testimony to specific piers.

Q. Why did you emphasize the present or recent provisions with respect to Transport Trading and Terminal Company?

A. That is the company that operated Army Base Piers 1 and 2 immediately preceding the Army operation.

Q. Was your only purpose to show that when that company was operating the Army Base it did receive the payments from the railroads?

A. My purpose was to show that the railroad absorbed the wharfage and handling on shipments moving over those piers during the time when the services were performed, and operated by the Transport Trading and Terminal, and the carriers still hold themselves out to make those allowances to the extent the Transport Trading and Terminal should perform those services.

Q. If that company were operating the pier today, why, the tariffs would apply.

A. That is the same as I said.

Q. The same thing?

A. Yes, sir.

Q. When did the Lincoln Tidewater Terminal start operating on the property that you referred to as United Nations Depot?

A. I do not know.

Q. Do you know that it was operating there at the time payments were made to it which you have mentioned?

A. Yes, I know that.

Q. Do you know it was not operating some other pier at that time?

92 A. You mean in Norfolk Harbor?

Q. The Hampton Roads Harbor.

A. I know that the payments to which I referred were for shipments moving over that facility.

Q. How do you know that?

A. The checks from at least some of the carriers refer specifically to the bills rendered against them and those bills can be traced through the records and identified with the work that was done at that facility.

Q. Under what arrangement did Lincoln Tidewater Terminal turn those checks over to the Treasurer of the United States.

A. I did not understand your question.

Q. Why did the Terminal turn those checks over to the Treasurer of the United States?

A. That is the arrangement under which the facility was operated.

Q. All right. What is that arrangement?

A. I am not familiar with all its details, but in brief, or at least in so far as the payment of these wharfage and handling charges are concerned, they provide, as I indicated earlier, that those receipts will be turned over to the Treasurer of the United States and the checks are so endorsed.

Mr. MACGUINEAS. Whose checks?

The WITNESS. The checks that the railroads paid the Lincoln Tidewater Terminals.

93 (By Mr. CORNIN). How is the terminal company compensated for the services it performs?

A. They are paid a specific amount by the Army.

Q. How much?

A. I do not know.

Q. Upon what is it based?

A. The payment?

Q. Yes.

A. The arrangement in effect now.

Q. What is the nature of it? How are they paid—so much per annum or so much per ton or what?

A. I am not familiar with the details of the payments made by the Army to the Lincoln Tidewater Terminal.

Q. You really do not know why the terminal endorsed these checks over to the United States, do you?

A. Yes, I do.

Q. Why?

A. Because that is the arrangement that is operating there.

Q. The terminal is not operating there to turn checks over to the United States and not get anything in return, is it?

A. They are paid by the Army. They are not doing that gratis. They are paid by the Army for, among other things, endorsing these checks that they receive from the carriers.

Q. What do they do on that pier?

A. I beg your pardon?

94 Q. What does the terminal company do on that pier?

A. They unload freight cars, put the lading on the floor of the pier.

Q. Is that all?

A. That is the service for which they are paid by the carriers.

Q. Is that all they do on the pier?

A. There are other operations conducted at the pier, and whether they do it or whether Army labor does it, I do not know.

Q. What labor unloads the cars to the pier?

A. I do not understand what you mean.

Q. Who unloads the cars on that pier?

A. Civilian labor to the extent it is available.

Q. And when not available?

A. As the General testified, if we have to draw on troops we do.

Q. Did the General testify as to this United Nations—

A. My recollection is he did.

Q. You are saying that is the fact?

A. I am simply calling attention to what he said.

Q. Well, do you know?

A. Of my own knowledge?

Q. Yes.

A. I have not been there to watch the operations there, no.

Q. Do you know who employs the labor to unload the cars?

A. No, I do not.

95 Q. Do you know who pays the labor?

A. I do not know that.



Q. Of course, if it were soldiers, they would not be paid specifically by anybody.

A. No.

Q. Certainly not by the terminal company?

A. That is right.

Q. Do you know whether the Lincoln Terminal Company is permitted under its operation with the government to operate as a commercial pier operator on that pier independently of what it may do for the government?

A. There again, as I recall, the General stated the extent to which that can be done.

Mr. MacGUEINER. I think the witness should be advised that he is not called upon to testify as to what a previous witness testified.

If he knows the facts, he may give the facts. If he does not know, do not purport to repeat what the previous witness said.

Q. (By Mr. COUSINS). What is your answer?

A. I do not know.

Q. You do not know whether the Lincoln Tidewater Terminals actually operates that pier or whether it merely performs certain services such as unloading cars for the government?

A. What do you mean by "operating the pier"?

96 Q. As a pier operator.

A. I still do not understand your question.

Q. Do you know in any way what the duties or the rights of the Lincoln Tidewater Terminals are on United Nations Depot?

A. Their duties are to unload the cars.

Q. Is that all?

A. Whether they have other duties, I do not know.

Q. That would be the duty of the stevedore, would it not?

A. No.

Q. Would you not call that just a stevedore operation?

A. No.

Q. What would you call that, operating a pier or unloading cars?

A. That is car unloading.

Q. You would not call it operating a pier, would you?

A. Not the way the Army operates the piers.

Q. Who operates Army Base Piers 1 and 2?

A. The Army.

Q. All right. Who unloads the cars?

A. The Army.

Q. I am going to ask you those same two questions as to United Nations Terminal.

Can you answer the question as to that terminal in the same way as you have answered as to the Army Base?

Mr. MACGUINEAS. If you know the answer.

Mr. COUSINS. Certainly.

97 The WITNESS. You ask the questions.

Q. (By Mr. COUSINS). You told me that the Army operates Army Base Piers 1 and 2. Whatever you meant when you said the Army operates there, in the same sense I want you to tell me who operates the United Nations Depot.

A. I do not know. By operation of the pier I mean the entire operation of the pier.

Q. All right. The tariff that you read provides that certain absorptions will be made to pier operated by Lincoln Tidewater Terminal, does it not?

A. The tariffs do not provide for absorptions because of operation of the pier. They provide for the absorptions to make shipside delivery or for wharfage and handling.

Q. Why should the railroads pay the Lincoln Tidewater Terminal 20 cents a ton wharfage if that company does nothing but unload cars?

A. I do not know.

Q. Who operated the United Nations Depot before Lincoln did?

A. I do not know.

Q. Maybe I have already asked you this, whether you know if the Lincoln Tidewater Terminal handles commercial freight independently of any work that it does for the government?

Mr. MACGUINEAS. The witness has already answered.

The WITNESS. I do not know.

Q. (By Mr. COUSINS). You said you did not know that?

98 A. Right.

Mr. COUSINS. That is all.

Q. (By Mr. REYNOLDS). You referred to the fact that in May, 1943, the Atlantic Coast Line Railroad paid the Lincoln Tidewater Terminal \$544.68 for wharfage and handling; is that correct?

A. Right.

Q. Was that the only instance you testified of which the Atlantic Coast Line made any payment to the Lincoln Tidewater Terminals for wharfage and handling?

A. I did not.

Q. Was that the only instance you found in which the Atlantic Coast Line Railroad made any payment to the Lincoln Tidewater Terminals for wharfage and handling?

A. No. The Atlantic Coast Line has made other payments.

Q. Can you give me some of the other instances?

A. I can not give it to you. I read from a memorandum I prepared before I came in. I do not have the other instances here.

Q. Are you certain that there were other instances in which the Atlantic Coast Line made the payments?

A. Yes, I am.

Q. Do you know whether or not the Lincoln Tidewater Terminals billed the Atlantic Coast Line for \$544.68 for wharfage and handling?

99 A. I do not know.

Q. Do you know whether or not the shipments for which that sum was paid were shipped prepaid or shipped collect?

A. I do not know.

Q. Do you know whether or not the shipper—that is, the consignor, added the \$544.68 to the amount he paid the railroad in addition to the line haul rate?

A. I do not know.

Q. Do you know whether or not the shipper—that is, the consignor, added the \$544.68 to the amount he paid the railroad in addition to the line haul rate?

A. I do not know.

Q. Do you know whether these government shipments that are made to the Army Base are made on domestic or export bills of lading?

A. They are made on government bills of lading, so far as the Army is concerned, on the Army traffic.

Q. Domestic bills of lading?

A. Government bills of lading. I did not see the Government bill of lading made.

Q. What notice, if any, does the Government give the railroads that any particular traffic moving into the Army base is intended for export?

A. The bill of lading, when it is made out, shows that.

Q. In what respect does it show that? How does it show?

A. Some of them say specifically "for export," or they do release numbers—they have release numbers, in any event.

Q. What do you mean "in any event"?



100 A. I will say it this way: All of them have the release permit, the release number, which is essential, which is a prerequisite to making an export shipment. That notice shows it is for export.

Q. What is a release?

A. A permission you must obtain to make shipments to a port for export.

Q. Obtained from whom?

A. It depends on whether it is Army or Lend-Lease. The O.D.T., I believe, issues the release.

Q. Did I understand you to say then that any shipment which has an O.D.T. number on it is an export shipment?

A. The ones that have the QMR release numbers are export shipments, and, in addition, the bills of lading in almost every case show "for export" in so many words.

Q. They have not those words on them, "for export"?

A. They do, right.

Q. Have you examined any bills of lading to determine whether that is a fact?

A. I have. In addition, many of them have the overseas code designation which the Army requires the Army Depot or the manufacturers for the Army to put on the bill.

Q. Have the railroads been advised as to the meaning of the code?

A. You mean what a given code means as to the exact overseas destination?

101 Q. Have the railroads been advised that certain code numbers means a shipment is to be expected?

A. The Army does not tell any one what the code numbers mean. The Army does not say that a certain code means a shipment is going to the Mediterranean, for instance.

Q. Does the government say that a certain code number means that a shipment is to be exported?

A. There is a variety of code numbers.

Q. That is my information, too.

A. That is right, but they are all readily identifiable by people who handle the shipments from day to day, whether they are in the railroad service or in the Army service as identifying that shipment as an export shipment.

Q. That is just a conclusion of yours?

A. No.

Q. I will ask you, has the railroad ever been advised that a code number means that a shipment will be exported?

A. The Army would not say to any one what the meaning

of a code number is as regards overseas destination. That is the reason for putting a code number on.

Q. I am not asking you whether it is North Africa, Italy, or any particular destination. What I am asking you is if the railroads have been notified that a certain code number means that a shipment is to be exported.

A. What do you mean by "notified"?

Q. Advised, informed—any of those words.

102 A. Yes.

Q. By whom?

A. The local people at the port of embarkation.

Q. How do you know that?

A. I know that because in working out these operating arrangements, such as the one with the Belt, the railroad men have to be apprized of these details just as well as the Army personnel. Your employees operating around the port of embarkation are all screened for security reasons and they know when these shipments are for export.

Q. Can you tell me who connected with the railroad was so advised and by whom he was advised?

A. By name?

Q. Yes.

A. No.

Q. Or office or title?

A. I say that the Army local people at port of embarkation have apprized the railroad local people at port of embarkation. That is what I mean by notification. That is why I asked you what you mean by notification.

Q. I asked you how do you know that to be the fact? Did you hear them advise the railroad people that a certain code number meant that shipments were to be exported?

A. No.

103 Q. Did you see any correspondence in your office in which that advice was contained?

A. No.

Q. To be perfectly frank about the matter, that is just a conclusion of yours, is it not?

A. No.

Q. What is it, then?

A. Well, it is notification, as I understand notification.

Q. You just assume that the notice has been extended. You said you had not heard it extended, you have not seen it extended, that is, seen any correspondence in which it was extended.

How do you know that that is correct?

A. I have talked with our local people and I have talked with them about this particular point.

Q. Which one of your local people did you talk to?

A. I talked with our people here in the Port of Embarkation several times.

Q. I am asking you which ones?

A. I can refer to Captain John W. Gillis, assistant transportation officer.

Q. What you have told me is based on a statement he made to you?

A. In part.

Q. What else is it based on?

A. I say he is the only one I talked with around the port. I raised that particular question myself.

104 Q. There are some shipments that go to the Army Base that are never exported; is that not the fact?

A. I do not know.

Q. Do you know what kind of bills of lading, whether export or domestic, these so-called commercial shipments moved on?

A. I do not know.

Mr. REYNOLDS. I have not anything further.

Q. (By Mr. DIXON). Are the rates and the regulations shown in your exhibits those presently in effect?

A. Right.

Q. I take it that to the extent indicated those rates, rules, rules, and regulations apply on this traffic that moves over Army Base Piers No. 1 and 2?

A. I do not understand your question.

Q. The rates shown in your exhibit to Norfolk apply on this government freight that moves over piers 1 and 2?

A. Yes, sir.

Q. These terminal arrangements would not apply because they are not so indicated?

A. The Army is not shown by name in the terminal tariff.

Q. Can you tell us to what extent any of these rates or regulations have been superseded by Section 22 quotations which have been made to cover?

A. We have no Section 22 quotations covering wharfage and handling at Norfolk.

105 Q. Have you any Section 22 quotations that cover line haul rates to and from Norfolk?

A. Yes, sir.

Q. And to the extent such quotations are outstanding, they would apply in preference to the rates shown in these exhibits?



A. To the extent that lower charges would prevail by application of Section 22, that is correct.

Q. That is correct, is it?

A. That is correct.

Q. Now, all of this stuff moves under government bills?

A. The Army traffic does.

Q. It is, therefore, subject to land grant?

A. Right.

Mr. MACGUINEAS. I object to any questions along that line. That is not relevant to the issues in this case.

Mr. DIXON. He has already answered the question.

Exam. DISQUE. He has already answered the question.

Mr. MACGUINEAS. I move to strike the answer as an answer to a question which is immaterial.

Exam. DISQUE. If it is immaterial, it will not be considered.

Mr. DIXON. That is all.

Q. (By Mr. CHAFFEE). I note on page 16 of your Exhibit No. 3, an item from the Jones' Tariff providing for export rates to Norfolk by the Chesapeake & Ohio Railway as delivering carrier, and that they do not include 106 wharfage, handling, or other charges except switching.

Is that same restriction not in effect in connection with all export and import rates via the Chesapeake & Ohio as delivering or originating carrier at Norfolk?

A. I did not check it for all export rates. I noticed it in other tariffs.

Q. Do you know of any tariff in which the converse would be true or is true?

A. I can not name one at the moment.

Mr. CHAFFEE. That is all, thank you.

RE-DIRECT EXAMINATION.

Q. (By Mr. MACGUINEAS). Just one question on re-direct examination. Can you tell us whether a substantial portion of the traffic presently moving over Army Base Piers 1 and 2 is subject to Section 22 quotations?

I mean, generally, do you know whether that covers a large part of the traffic or a small part?

Exam. DISQUE. What do you mean by "subject to"?

Mr. MACGUINEAS. Traffic the rates on which would be covered by outstanding Section 22 quotations.

The WITNESS. I can answer your question in this way: There are a variety of Section 22 quotations. I do not recall any that apply to Norfolk solely. To the extent that

we have Section 22 quotations that cover the country as a whole, they provide for no greater deduction from 107 the commercial rates on shipments destined to Norfolk than on shipments destined to any other port; therefore, the deduction received by reason of the Section 22 quotations can not be attributed as a reduction designed to make compensation for wharfage and handling at Norfolk.

As to the proportion of traffic that moves on Section 22 quotations, that question is almost impossible to answer unless you take the tonnage for a given day and have the auditor run the whole thing back.

There simply is no way to make a general statement as to what proportion of traffic is subject to Section 22 quotations.

Mr. MACGUINEAS. That is all.

Q. (By Exam. DISQUE). Are you claiming this 3 cent deduction on traffic that does move subject to Section 22 quotations?

A. Yes, sir.

Q. That would depend on the quotation, would it not, rather than the tariff?

A. Unless the quotation is specifically stated as a line haul rate. The tariff might state that the rates to be derived thereunder would not include wharfage and handling at Norfolk. Wharfage and handling would be allowed under an application of the line haul tariff from which the Section 22 provides deduction as modified, if at all, by the terminal tariffs applying at Norfolk.

Q. You mean that is the way you would construe it?

108 A. Right.

Q. (By Mr. Dixon). Think for a minute about all this military traffic which goes through these Army Depots under transit, that transit being covered by Section 22 quotations—

A. Yes.

Q. —there would be a tremendous volume of that, would there not?

A. Again I can not answer your question unless you take a particular day or a particular time.

Mr. Dixon. That is all. Thank you.

The WITNESS. There is no way at all.

Mr. Dixon. That is all right.

Q. (By Mr. Winn). What form do these Section 22 quotations take? Do they take the form of stating the applica-

ble published tariff rates with a certain deduction so that you would go to the line haul tariff to find out what the Section 22 quotation means and how it is applied, giving effect to the quotation deduction? Is that the way it is worked?

A. On Section 22 quotations, you take almost any form that the issuing carrier or issuing agent desires to use.

Q. If that is so, how do you determine whether a terminal allowance tariff or service tariff applies or does not apply to a Section 22 quotation rate?

A. If we have a Section 22 quotation, for instance, that in effect names a column rating, all that does is name  
109 the column rating.

Q. It refers to the tariff in order to find out what the rate really is?

A. Or the territory.

Q. So that under the Section 22 quotation, you work back to the tariffs immediately to find out what line haul rates, with the terminal charges are applicable with the rules to apply?

A. As a rule on line haul quotations, that is true. In fact, a great number of Section 22 quotations state that specifically as a more or less common item, similar to the terminal facility item that you see in the line haul service.

Q. What is it that they carry as a common item?

A. That the provisions of this quotation modify the terms of the tariff only to the extent set out in the quotation.

Exam. DISQUE. How can you ask the Commission to make any finding on a Section 22 rate?

The WITNESS. We are not. We are asking you to make a finding on the tariffs that are lawfully on file with the Commission.

Exam. DISQUE. It looks to me like you are trying to make the Commission find in connection with a Section 22 rate.

Do you want us to take the terminal charge off of the Section 22 rate?

The WITNESS. To the extent it applies, to the extent the carriers say they do not want that done.  
110

Q. (By Mr. WAGNER). Major Heimbaugh, when you negotiated your Section 22 contract at Newport News, did that have any relation at all to the Interstate Commerce Act other than Section 22?

A. Section 22 simply says that carriers are not prohibited from making reduced rates.

Q. You entered into a contract with the Chesapeake & Ohio—and when I say “you” I mean the United States



Government—in which you got an allowance of 50 cents a ton.

If I am correct, that had no relation to any contract on file with the Interstate Commerce Commission, did it?

Mr. MACGUINEAS. This is going beyond the scope of the direct examination. This witness did not testify with respect to the arrangement with the C & O. That was General Kilpatrick, and he is the appropriate witness to be cross examined, if it is to be done.

Mr. WAGNER. Do you not want to get the facts presented to the Commission?

Mr. MACGUINEAS. Certainly, in the proper way.

Mr. WAGNER. I am trying to get them in in the proper way. The General does not know one thing and this witness does not know another.

I am not interested in this controversy at all except that I do not want the terminal charges separated from the line haul charges. That is the only interest I have in this proceeding.

When you come to your Newport News situation you have an allowance out of the Chesapeake & Ohio for the service performed by the United States Government, am I right?

Mr. MACGUINEAS. I renew my objection that these questions are beyond the scope of the direct examination.

Exam. DISQUE. Is some other witness going to go into that matter?

Mr. MACGUINEAS. The General went into it this morning. He was available then for cross examination.

Exam. DISQUE. The main thing is, does Major Heimbaugh know the answer to the question?

That is all I am interested in. Do you know the answer or not?

The WITNESS. I am not clear yet as to what his question is.

Mr. WAGNER. Here is my question:—

Exam. DISQUE. I do not know whether it is cross examination or or not.

Mr. WAGNER. I do not, either. I am not interested in whether it is cross or direct.

Q. (By Mr. WAGNER). You made one arrangement at Newport News under which the Government received an Allowance from the Chesapeake & Ohio Railroad for wharfage and handling, or for handling, is that not true?

A. We get it for handling. That is obtained under a contract, not a Section 22 quotation.

Q. I get you. It is under Section 22, but regardless of whether it is or not, it is not a published tariff allowance?

Mr. MACGUINEAS. I renew my objection.

Exam. DISQUE. I am not interested in the cross examination stage of it. I am interested in knowing whether or not the witness knows the answer.

Mr. MACGUINEAS. I am entitled to a ruling.

Exam. DISQUE. I will overrule the objection.

Mr. MACGUINEAS. Exception.

Q. (By Mr. WAGNER). At Norfolk the railroads have refused to allow the Government anything for wharfage and handling at the Army Base?

A. Right.

Q. That differentiates Norfolk and Newport News.

Is it not true that the same line haul rates apply—I am talking about export now—to the same ports?

A. In general.

Q. Newport News and Norfolk?

A. In general they do.

Q. At Norfolk you perform the service and the railroads refuse to allow anything for the service you performed?

A. That is correct.

113 Q. At Newport News you get 50 cents a ton out of the same line haul rate from the same point, is that not true?

A. That is true.

Mr. WAGNER. That is all.

The WITNESS. May I make this statement respecting Section 22 quotations?

Exam. DISQUE. Yes.

The WITNESS. In general, Section 22 quotations form of publication, if you may call it that, are made because the carriers elected to use that method rather than to put in the tariff. If they want to put these arrangements in the tariff, that is all right with us, but they chose the Section 22 method of providing a bases of rates for their convenience or for reasons of their own.

Exam. DISQUE. Any other questions?

Q. (By Mr. DIXON). By virtue of that method, the Government gets the benefit of lower charges than the general run of commercial traffic, does it not?

Exam. DISQUE. That is what Section 22 means, yes.

Q. (By Mr. DIXON). Is that right, Major Heimbaugh?

A. That question depends on the quotation. You are talking about many other things. For instance, to the extent that Section 22 quotation is favored, as many of them are, and are in effect, which says that the basis will be perhaps Column 65 with the *ex parte* 148 increase added, we are paying more under Section 22 quotations than if Column 65 had been published in a tariff.

Q. But less than the commercial shipper pays from the same point?

A. Only because there is no commercial movement.

Q. Well, take traffic of which there is a commercial movement by and large.

A. Then you ordinarily have rates.

Q. Ordinarily your Government quotations are lower than the commercial charges, are they not?

A. You do not name the quotation where there is an adequate line of column rates. There is no necessity for it.

Q. By "adequate" you mean low?

A. Rates that were made to take care of a commercial movement of traffic.

Mr. WAGNER. There would not be any sense in a Section 22 rate unless it was lower than the tariff rate, would there?

Exam. DISQUE. Can not the lawyers agree that Section 22 is not in this case?

Mr. DIXON. No.

Mr. WAGNER. We think it is. Section 22 rates must be lower than the tariff rates, or there would not be any tariff rates.

Mr. DIXON. Section 22 rates are not subject to the jurisdiction of the Interstate Commerce Commission. The lawyers ought to be willing to concede that on both sides of the table.

Exam. DISQUE. That is what I mean to say.

Mr. DIXON. And readily.

Exam. DISQUE. I will so rule.

Let us proceed with the hearing.

Mr. COUSINS. I have one question.

Q. (By Mr. COUSINS). I understood from what you said in the last few minutes you are really familiar with the contract between the Government and the Chesapeake & Ohio, is that correct?

A. What do you mean by "familiar"?

Q. Well, you declined to tell me anything about the contract between the Government and the Lincoln Tide-



water Terminals, but now you have been willing to discuss the arrangement with the Chesapeake & Ohio, and I assume, therefore, that you know more about the latter than you do the former?

A. The gentleman spoke only again of what the General spoke of this morning and that is all. I commented about. I have no working knowledge of the C & O contract.

Q. What you have been saying is based on what you heard the General testify to this morning?

A. Right.

Q. I thought your counsel instructed you to decline to do that.

A. He did.

116 Mr. MACGUINEAS. I would like the record to show that I tried to avoid these questions being put to the witness, and I was overruled.

Mr. COUSINS. You are talking about Section 22 rates?

Mr. MACGUINEAS. I am talking about the C & O contract.

Q. (By Mr. COUSINS). Major Heimbach, how did the Government come out on this deal with the C & O?

A. I do not know.

Q. After they have paid the labor and then get 50 cents from the C & O, what is the result? Do they make a profit or are they in the red?

A. I do not know.

Q. You do not know whether it would be better for the Government to let the C & O pay its own labor and not get a 50 cent rebate?

A. I do not know that.

Mr. COUSINS. All right. That is all.

Q. (By Mr. CHAFFEE). In connection with that Chesapeake & Ohio contract at Newport News, are you familiar enough with that contract and with the contract at Norfolk to say whether or not in all respects other than the allowance to the Government the contracts are substantially the same?

A. I do not know. I have not read the contracts. I do not know what their points of similarity are, if any, or their points of difference.

117 Q. So that the 50 cent allowance may or may not be comparable to something that the contracts on the Norfolk side express in a different way?

A. Again I do not know. I do not know how the 50 cents was arrived at. I do not know how they got at the arrangement they have with the Lincoln Tidewater Terminals.

Mr. CHAFFEE. That is all.

Mr. MACGUINEAS. One question, Major Heimbaugh:

Q. (By Mr. MACGUINEAS). Is it correct or is it not correct that the negotiations and the carrying out of the C & O contract is no part of your official duty?

A. That is absolutely correct.

Mr. MACGUINEAS. That is all.

(Witness excused.)

Mr. MACGUINEAS. I will offer in evidence Complainant's Exhibits 3, 4, and 5, which have been identified by this witness.

(Complainant's Exhibits 3, 4, and 5, Witness Heimbaugh, received in evidence.)

JAMES HENRY DEVEREUX, was sworn and testified as follows:

Direct Examination.

Q. (By Mr. MACGUINEAS). Mr. Devereux, will you state your present position with the Government?

A. I am at the present time associated with the War Shipping Administration, acting as Special Assistant  
118 to the District Manager, South Atlantic District.

Q. Will you describe briefly your duties in that position?

A. Primarily act as liaison between the War Shipping Administration and the Hampton Roads Port of Embarkation, in addition to that supervising the loading of lend-lease ships at Norfolk, Wilmington, North Carolina, arranging for space for non-Army or Navy shipments on vessels assigned to the Army for loading, and such other special duties as Mr. Blair, the District Manager, assigns to me.

Q. When did you assume your present position with War Shipping Administration?

A. On August 3, 1942.

Q. Previous to that time, had you been engaged in traffic activities in the Port of Norfolk?

A. Yes, sir.

Q. For how many years?

A. Since August, 1922, when I first came here.

Q. Describe the various occupations and positions in which you have been engaged since 1922.

A. From August, 1922, until June, 1931, I was manager of the local office at Norfolk and Newport News of the Norton Lilly and Company, Steamship Agents, with their main office in New York City; also manager of the Norfolk and Newport News office of Cory Mann George Corporation.

Wholesale coal exporters, whose main office is located in New York.

119 In October, 1931, I became associated with the Freight forwarding firm of Norton & Ellis, Incorporated, as secretary-treasurer, and at the same time with the Southern Stevedoring Corporation, doing a general ship loading and unloading business, as vice president. I have been with both of these corporations since that date, becoming president of each corporation in January of this year, but I am on temporary leave of absence in order to work with the War Shipping Administration.

Q. Mr. Devereux, will you describe for the record Army Base Piers 1 and 2 in terms of physical facilities for handling export and import traffic?

A. The Army Base terminals consist of two rather modern concrete piers approximately 1200 feet in length each, with aprons on both sides of each pier wide enough to accommodate two marginal railroad tracks.

There are sunken tracks running down the center of each pier. The two piers are separated; I do not know the exact distance, but I do know it is wide enough so that lighters can work alongside the steamers at these piers without interfering with traffic going up and down the slips.

Pier No. 1 is equipped with two 10-ton gantry cranes on the north side; Pier 2 with one 25-ton gantry crane on the southside.

The inshore end of the piers is concreted with concrete roadways connecting various warehouses situated further inland.

120 Q. Are there actually marginal tracks on the piers?

A. There are.

Q. On how many sides of the piers?

A. On each side of both piers.

Q. How many cargo vessels can be accommodated at both piers and worked simultaneously?

A. I would say that eight modern cargo vessels can be docked at the two piers at one time and worked to advantage.

Q. Are both piers covered?

A. Both piers are covered.

Q. Who owns Army Base Piers 1 and 2?

A. The United States Government.

Q. When were they built?

A. They were started some time during the last war and completed, as I understand it, after the war was over. I



was not here at that time; so I do not have the exact figures.

Q. Since you have been stationed at the port, what different organizations have operated the Army Base Piers?

A. The City of Norfolk was the first operator. They operated until some time in 1925, I believe in September, at which time the Norfolk Tidewater Terminals took over the operation and continued until July 1, 1940, at which time the Transport Trading and Terminal Corporation took over the operation.

Transport Trading and Terminal continued until such time as Pier 2 was taken over by the Navy. They then  
121 continued to operate Pier 1 until such time as that pier was taken over by the Army.

Q. Since the summer of 1942, is it correct to say that both piers have been actually operated by the Army?

A. I do not think the Army started actual operation of Pier 2 until some time either late in 1942 or early in 1943. The Navy was operating it for a period of that time.

Q. Mr. Devereux, before the Army took over the base piers, was there a consistent practice of the carriers with reference to the unloading of cars on to pier tracks?

A. Yes, there was.

Q. Can you state what the customary practice of the carriers was?

A. The customary practice of the carriers was to place the cars on box car freight, inside of the piers adjacent to the berths at which the steamer would dock and load and unload the freight from these cars and place it on the pier in what is commonly known as the ship's loading berth.

Mr. COUSINS. What piers are you talking about?

The WITNESS. Piers 1 and 2, Army Base.

Q. (By Mr. MACGUINEAS). What about import traffic, how was the loading of that handled?

Mr. COUSINS. I object to the question, as I should have to the last one, unless the witness is qualified to talk about the operation of this pier prior to his connection with  
122 the Government.

The WITNESS. What do you mean by "qualified"?

Q. (By Mr. MACGUINEAS). Let me put the question: Have you been familiar since 1922 with the actual mode of operation of Army Base Piers 1 and 2?

A. I would say that I have.

Mr. COUSINS. How? What did you have to do with it?

The WITNESS. I had vessels down there for which I was agent, loading and discharging. I spent a great deal of time down there when they were loading and discharging.

Mr. COUSINS. You are talking about vessels?

The WITNESS. I am talking about vessels.

Mr. COUSINS. You have not had any connection with the pier operator?

The WITNESS. I had none other than seeing that the cargo was taken off the pier or put on the pier.

Mr. COUSINS. How do you know who took the car out and put it on the pier?

Mr. MACGUINEAS. No question has been asked as to who took the car out and put it on the pier.

Mr. COUSINS. I understood the witness to say that the railroad took the car to the pier.

Is that not what you said?

The WITNESS. That is correct.

123 Mr. COUSINS. How do you know that they moved it out and put it on the pier? You did not always see the railroad power attached to the car, did you?

The WITNESS. No.

Exam. DISQUE. Does the tariff answer all these questions? Does the tariff any place say who does the loading and unloading?

Mr. MACGUINEAS. The tariff may say. I was supposed to do it, if I may, by the witness. I am showing what was actually done. If counsel wants to cross examine, he may do so at the proper time, but I wish to continue with my examination.

Mr. COUSINS. I object to the question until he qualifies. There is no use getting a lot of miscellaneous information in the record.

What he has said so far is inaccurate. Nobody in this case has said that the railroads went on to that pier and unloaded a car as this witness said.

Mr. MACGUINEAS. I wish to continue my direct examination.

Exam. DISQUE. I would like to check what he says with the tariff to see if what he says is correct.

Mr. MACGUINEAS. Major Heimbaugh covered that. Major Heimbaugh referred to the tariff provisions in the past.

Mr. COUSINS. He pointed out numerous provisions, not one of which said the railroads would unload a car on the pier.

Exam. DISQUE. Let us see about it.

124 Mr. MACGUINEAS. My question is: Since 1922 what has been the consistent practice of the carriers with reference to the loading of import freight on to cars and on to the pier tracks?

Mr. COUSINS. Objected to on the ground that the witness has not qualified.

Exam. DISQUE. He asks: What has been the practice of the railroads.

Answer the question.

The WITNESS. The practice has been for the agent of the vessel, though the stevedore, to arrange for the discharge of the freight from the vessel on to the pier floor, at which point the terminal operator would pick the freight up and load it into railroad cars.

Q. (By Mr. MACGUINEAS). Since 1922 has it been the consistent practice of the carriers to perform both the carloading and the car unloading through terminal operator?

A. It has been.

Mr. COUSINS. Objected to.

Exam. DISQUE. The tariff will answer that question.

Mr. COUSINS. This is not a tariff man.

Exam. DISQUE. How does he know who was doing it? Did he see it done and who was doing it?

Mr. MACGUINEAS. Cross examination can bring that out if he feels it necessary.

The WITNESS. I paid bills for having it done.

Exam. DISQUE. By whom?

125 The WITNESS. I received invoices from the terminal operators for wharfage and handling as freight forwarder on traffic I sent down there for export.

Exam. DISQUE. And it was your traffic and you know that the terminal company has been unloading and loading this freight for the railroads?

The WITNESS. That is correct.

Exam. DISQUE. All right.

What is next?

Mr. COUSINS. I move that the answer be stricken from the record as being without basis of qualification.

Exam. DISQUE. Proceed.

Q. (By Mr. MACGUINEAS). Mr. Devereux, are you familiar from your own observation with the practice which the Army has been using with reference to loading and unloading of cars on the Army Base Piers since the Army took over?

A. In so far as the type of labor being used, yes, sir.

Q. And the manner—

A. And the manner in which it has been done, yes.

Q. Is there any difference in the actual manner in which the cars were unloaded on to the pier floors when the



operator did it, the terminal operators, than the manner in which the Army is now unloading those cars on to the pier floors?

A. No.

126 Exam. DISQUE. You are talking about the physical work now?

Mr. MACGUINEAS. That is right.

The WITNESS. Yes.

Q. (By Mr. MACGUINEAS). Mr. Devereux, since the summer of 1942 when the Army took over the base piers, and at the present time, what other facilities are available in the Norfolk harbor for the handling of general export and import cargo?

A. The Norfolk & Western Export Pier at Lambert Point, Piers O and L, and Pier 4, Pinners Point, Portsmouth, owned by the Southern Railroad.

Q. Describe the physical set up of both the Pinners Point and the Lambert Point piers.

A. Pinners Point consists of one pier some eight to nine hundred feet in length, a wooden structure, marginal track on the southside, a rather narrow apron, dredged to approximately 30 feet, capable of handling a modern cargo vessel loaded to its deepest draft.

Q. Did you say capable or incapable?

A. Capable. The north side of the pier has not sufficient depth of water to permit the loading of modern cargo vessels to drafts that they go out in today's operations. There are sunken tracks in the center of Pinners Point pier.

The Lambert Point piers consist of Pier L, 1200 feet in length, single marginal track on the south side, no marginal track on the north side, sunken tracks in the middle; 127 and Pier O, some eight hundred to 850 feet in length, with a marginal track on the south side and no water or berthing facilities on the north side.

Q. What mechanical equipment do these two piers, Pinners Point and the Lambert Point docks have for loading and unloading ships?

A. None.

Q. Mr. Devereux, have you made a study to determine whether or not the volume of traffic that has been and is now being handled over Army Base Piers 1 and 2 could be handled over the Lambert Point dock and the Pinners Point pier?

A. I have

Q. Will you state the conclusion which you reached from that study?

A. My study was for the year 1943 on the basis of traffic which moved over the Army Base Piers during that year. I would say that approximately 37 per cent could have been handled at the Pinners Point and Lambert Point piers.

Mr. WAGNER. May I have that statement repeated?

(The last answer was read by the reporter.)

Mr. WAGNER. In other words, if the Army base had been closed?

Mr. MACGUINEAS. You better answer that audibly.

The WITNESS. Yes.

Q. (By Mr. MACGUINEAS). At the Lambert Point  
128 docks, what is now the practice of the carriers in unloading cars for export traffic?

A. The cars are unloaded by the terminal operating company.

Q. What is the name of that company?

A. Lambert Point Docks, Inc.

Q. Is there any difference in the manner in which that unloading service is performed at the Lambert Point Docks and the manner in which it is being performed by the Army at the Army Base Piers?

Exam. DISQUE. What do you mean by "unloading"? Do you mean the mere physical effort of taking the stuff out of the cars or bringing the cars on to the dock and so forth?

Mr. MACGUINEAS. I refer to the removal of freight from the car when it is on the pier track and placing that freight on to the pier floor within proximity of the ship's berth, as the witness testified.

Q. (By Mr. MACGUINEAS). Are you answering in terms of that?

A. There is practically no difference. There is no difference.

Q. Well, now, at United Nations Depot, how is the loading and unloading of the cars performed at the present time?

A. I am only familiar with the Air Corps part of it down there, which I know is handled through Lincoln Tidewater Terminals.

Q. Is there any difference in the manner in which the cars  
129 are unloaded by the terminal operator at United Nations Depot than the manner in which the unloading service is being performed by the Army at the Army base piers?

A. The physical part of it? No.

Q. It is equally true that the loading of cars of imported traffic is handled in the same way by the terminal operators at United Nations Depot and at Lambert Point dock as it is now being handled by the Army at the Army Base Piers?

A. Yes.

Mr. MACGUINEAS. That is all.

#### Cross Examination.

Q. (By Mr. Cousins). What kind of shipments are going over the Lambert Point Dock?

A. Some lend-lease shipments to the United Kingdom, and some Russian lend-lease shipments to other destinations, import business from India, Africa, and other foreign countries.

Q. Where is this Pinner's Point Pier that you told us about?

A. It is in Portsmouth, on the other side of the river.

Q. Operated by whom, did you say?

A. Owned by the Southern Railroad; operated by Norfolk Tidewater Terminal.

Q. What kind of traffic is going over that pier?

A. Some returned Army cargo, some newsprint, sugar, and other classes of what we might call general cargo.

Q. Import, export, or what?

A. Most of what they have out there has been  
130 import cargo. Very little export.

Q. Now, export cargo, I assume, is going out from the United Nations Depot?

A. Yes, sir.

Q. Those are the only piers in Norfolk, with the exception of the Army Base, that are handling export traffic?

A. That is correct.

Q. Is that correct?

A. That is correct.

Q. Has that always been so within your time?

A. No. At one time the Imperial Tobacco Company had its own terminal in Berkley, where it handled their tobacco and occasionally a few shipments for other shippers. The Southgate Terminal at the foot of Tazewell Street was used at one time for intercoastal freight.

Q. I am talking about export traffic.

A. That was also used occasionally for export traffic. The Norfolk Warehouse Corporation pier was used for the exportation of cotton.

Q. Those three are not used for export business today?

A. No, they are not.



Q. Any reason why they could not be?

A. Well, the Norfolk Warehouse Corporation's terminal has been outgrown by the size of the ships. You can not get a vessel in there today without it sticking out in the stream 150 feet, which is dangerous to the vessel  
131 and contrary to harbor safety regulations.

The Imperial Tobacco Terminal was built primarily for tobacco and is not in any sense of the word a general cargo terminal. It was built to handle one commodity and one commodity only.

The Southgate Terminal pier is fed only by one railroad, the Chesapeake & Ohio, and it is a rather small terminal and except for small lots of freight could not be used to advantage in present day operations where all of our movements are practically full cargo vessels. That was used in the days when ships came in and picked up three, four, or five hundred pounds.

Q. The fact that the railroads undertook to absorb the handling charges of those piers does not have much effect one way or the other with respect to export traffic? They might just as well be cancelled out of the tariff?

A. That is correct. They are not being used.

Q. Look at the map, Exhibit No. 2, Mr. Devereux.

If we call north the top of this map—

Mr. MACGUINEAS. The direction arrows are on the map, Would they not refer to the true direction?

Mr. COUSINS. That is the best I can do. Put it the other way.

Q. (By Mr. COUSINS). If you call the north end the top of this map, the piers that you call the United Nations Depot are almost up at the top of the map numbered 6  
132 and 7, is that so? I should have said 9.

A. 9, yes, sir.

Q. Is that correct,—9?

A. That is correct.

Q. Who owns those piers?

A. The Norfolk and Western Railroad.

Q. Who has possession of them now?

A. They are under lease to the United States Army.

Q. Do you know why they are designated on this exhibit as Lincoln Tidewater instead of United States Army or whoever has control of them?

Mr. MACGUINEAS. This witness did not prepare the map. He is not competent to testify as to why somebody else prepared the map in a given way. If you want testimony on

that I will be glad to supply the witness, but this is not the witness.

Q. (By Mr. Cousins). Do you know?

A. No. All I do know is that when the Lincoln Tidewater Terminal stopped operating down there, they painted their name across the face of the pier.

Q. Did you say "stopped" operating or "started" operating?

A. Started operating.

Q. Have you anything to do with the arrangements between the Lincoln Tidewater Terminal and the Government on that pier?

A. Nothing whatsoever.

Q. Did you have any relations with the Lincoln  
133 Tidewater Terminal?

A. None.

Q. You said that freight over which you have charge moves on that pier, did you not?

A. Yes. I can have access to a berth at that pier only through the Army with whom I make all the arrangements for berthing of vessels down there.

Q. You do not make your arrangements with the Lincoln Tidewater Terminal?

A. No.

Q. Now, the Army Base about which we are talking I think is shown on this map as Piers 12 and 13, is that correct?

A. That is correct.

Q. You described the two piers that extend out into the water and possibly you described those next dark objects as warehouses, did you, or are those warehouses back of the piers?

A. Back of the piers are warehouses.

Q. Well, as you get back of that, there are some diagonal lines. What are they?

A. They are—I do not know the date of this map—a number of spurs from that track run through there and the Navy at the time it was operating one half of the terminal put up a number of warehouses which, I think, they are still using.

Q. That is on the Army Base property, is it?

A. That is on the Army Base property.

134 Q. Then we have some tracks under which says "U. S. Army Base Yards." I take it, therefore, the property of the Government extends almost over to the

edge of this map where a connection is shown with the Virginian Railway; is that correct?

A. I do not know how far the Army Base extends.

Q. Are those tracks called Army Base Yards a part of the property of the Base?

A. The ownership of that yard I do not know.

Q. Do you know where the Norfolk Belt Line comes in there?

A. I have been to that point, yes, sir.

Q. Where is that point on the map?

A. It shows almost over on the right hand side, and also that comes in farther up where the line leads into the United Nations Depot. There are two entrances by track.

Q. Now, when the Belt Line is bringing in a string of cars for the Army Base, where does it place them with respect to those tracks?

A. I do not know. I have no control over that movement.

Q. You do not know?

A. I have nothing to do with it.

Q. I thought you said a few minutes ago that the railroads took the cars down to the pier.

A. I said in private operation. I did not say anything about what the railroads were doing with it now. My testimony was to the operation prior to the time the Army took the terminals over.

135 Q. But you do not know whether cars are placed for the Army Base now by the railroads?

A. I do not.

Q. You do not know who switches the cars from the yard down on to the piers, do you?

A. Except by what I have seen on the locomotives.

Q. What does it say?

A. One of them says "U. S. Belt Line Railroad" and several of the others "U. S. A. B." I think it is.

Q. Did you mean to say U. S. Belt Line Railroad?

A. Norfolk.

Q. You have seen one locomotive of the Belt Line and several of the Army Base moving cars?

A. Yes, sir.

Q. Did you hear General Kilpatrick testify?

A. Yes, sir.

Q. Are you not the man that he told me to get to tell me about this operation?



Mr. MacGUINEAS. I object to that question. The General did not say who could tell about it. In the first place, it is not proper to ask this witness what General Kilpatrick said.

Mr. COUSINS. Is there any impropriety in trying to get down to the bottom of this thing?

Mr. MacGUINEAS. If you will ask it by proper questions, you may do so as much as you like.

136 Exam. DISQUE. Is this the man that General Kilpatrick talked about?

Mr. MacGUINEAS. To my knowledge he is not. I can not read General Kilpatrick's mind; however.

Q. (By Mr. COUSINS). Prior to two years ago, Mr. Devereux, what locomotive did you see operating on this property?

A. The Belt Line Railroad locomotives. I do not know whether the Transport Trading and Terminal operated it. In the days when the Norfolk Tidewater Terminals operated the piers, they had a small locomotive of their own.

Q. Only one?

A. As I recall, only one. I am not certain.

Q. Do you know where the Government got the locomotives it is now operating?

A. No.

Q. You say "no"?

A. No; I do not know.

Q. How long has the Lincoln Tidewater Terminals been operating the United Nations Depot?

A. I can not say definitely, but I think since some time in 1941.

Q. Who operated it prior thereto?

A. Lambert Point Docks, Incorporated, operated it up until such time as the Government took possession.

Q. Do you know why the Government put that company off and put the Lincoln Terminal on as operator?

137 A. I do not know.

Mr. COUSINS. That is all.

Q. (By Mr. REYNOLDS). I understood you to say, Mr. Devereux, that it is your conclusion that 37 per cent of the traffic that moved over the Army Base piers during the year 1943 could have been handled over the Lambert Point and Pimmers Point piers; is that correct?

A. That is correct.

Q. What in terms of tonnage was 37 per cent of the traffic that moved over the Army base?

A. For military security, I can not divulge any Army traffic figures.

Q. Can you give us approximately the tonnage?

Mr. MACGUINEAS. I object to that. We have instructions from the War Department that that may not be revealed.

Mr. COUSINS. Do your instructions include the past?

Mr. MACGUINEAS. 1943. Yes, anything with respect to volume of movement by ships.

Q. (By Mr. REYNOLDS). How does 37 per cent of the tonnage that moved over the Army Base Piers in 1943 compare with the total export-import tonnage moving through Norfolk during the year 1939?

A. I have not got the 1939 figures.

Q. You have been in the steamship company business for years, you said.

A. Yes, sir.

138 Q. Have you any idea as to how 37 per cent of the traffic moved over Army Base Piers 1 and 2 in 1943 would compare with the total amount of the export and import traffic moving from Norfolk or through Norfolk and Portsmouth during the year 1939?

A. Yes, sir.

Q. Do you not think that 37 per cent of the tonnage moving over Army Base Piers 1 and 2 in 1943 was greater than the total amount of tonnage, export and import, that moved through Norfolk and Portsmouth in 1939?

A. I would not like to risk an assertion on that.

Mr. REYNOLDS. That is all.

(Witness excused.)

JAMES C. MCCREADY was sworn and testified as follows.

Direct Examination.

Q. (By Mr. MACGUINEAS). Mr. McCready, will you state your present position?

A. Marine superintendent, Water Division, Transportation Corps, United States Army.

Q. Where are you stationed?

A. The Hampton Roads Port of Embarkation at Norfolk.

Q. Specifically, where do you work?

A. At Piers 1 and 2, Army Base.

Q. What are your duties at those piers?

139 A. Docking and undocking of ships, laying out the cargoes, laying out the ships, getting them to the piers and in the proper berth for movements going out, also providing for movements coming in.

Q. When did you take that job with the Army, Mr. McCready?

A. On July 15, 1942.

Q. Where were you employed before you joined the Army Forces?

A. At the same place, with the Transport Trading and Terminal Company.

Q. That is the terminal operator which operated the terminal before the Army took over?

A. That is correct.

Q. How long did you work at the Army Base Piers for Transport Trading and Terminal?

A. Since July 1, 1940, when I came down here from New York, representing that company. I was superintendent for them up in New York. I came down here as an assistant operating manager.

Q. When Transport Trading and Terminal was operating the Army Base Piers, did that company customarily unload the cars on the pier tracks?

A. They did.

Q. Unload on to the pier floor?

A. That is right.

Q. Who paid the Transport Trading and Terminal Company for that service?

140 A. That is a matter of office record. I understand the railroads paid them. We were the directing agents.

Q. Since the Army took over the base piers in 1942, who has been performing the actual service of unloading the cars on to the pier floor?

A. It is practically the same operation. The only change in it is they turned the Transport Trading and Terminal payroll over to the Army. They just took over.

Q. Is any mechanical equipment being used by the Army in the performance of the unloading service and loading the cars with import traffic?

A. I do not get that quite clearly.

Q. Referring to the unloading of cars for export traffic and the loading of cars with import traffic, is mechanical equipment used in that service?

A. It is, yes, sir.

Q. Will you describe that equipment generally?

A. Previously, before the war, we used to go in mostly with man labor. It was a weak back and a strong mind proposition. We did not have the equipment that we have today and we used to tier the freight naturally man-high all over the pier. Since the war broke out the Army has



come in with a tremendous amount of equipment that has taken its place, but the actual operating and loading and unloading the car is the same. We have the equipment for other things, but you must actually  
 141 go into the cars and the labor must be performed in the cars in the same manner that it was previously.

Q. It is correct to say, confining yourself to the actual unloading of the car on to the pier floor, that the Army is now doing it the same way that Transport Trading and Terminal did it before?

A. There is a slight change in that due to the mechanical equipment that we have.

Q. But that is the only change?

A. That is right. It is still being hand-trucked out of the car similar to what it was previously.

Mr. MACGUINNESS. That is all.

#### Cross Examination.

Q. (By Mr. COUSINS). Can the Army unload cars faster than you did?

A. I will say, due to the type of labor you got today, no.

Q. Due to the mechanical equipment that they have today, what is the answer?

A. The mechanical equipment takes its place after the car has been unloaded. It has nothing to do with the physical discharge of the freight from the car there. That is practically the same.

Q. You have not a car unloaded until you have the freight piled up somewhere on the floor.

A. That is true, I agree with you. We have to put  
 142 it up on pilots, then pile it up later; but to get it out of the car, where we used to take it out of the car and just dump it, now we put it on pilot and tier it up.

Q. That entire operation is the unloading of the car to shipside, is it not?

A. The ship at berth, not always shipside. It is what we call ship's berth on the dock, probably that day, and two days later it may go from shipside into the ship.

Q. The operation of unloading the car has not been accomplished when the goods are piled up, has it?

A. Make yourself a little clearer. I can not get that.

Q. The operation of unloading cars, unloading the freight from the car to pier, in order to accomplish shipside delivery is not completed until the goods are piled up some place, is it?

A. That is quite true.

Q. So the piling up is just as much a part of the operation as throwing the stuff out of the car door?

A. There is a reason for that. We did not go into such volume business before the war. We only had one-tenth of the business then we have now. We can not just pile it man-high, or overhead. We do not have enough freight vessels to tier it that way. It is necessary to do it as we do now.

Q. You have been on the pier four years about, have you not?

A. Four years on this pier!

143 Q. Yes.

A. I have been on the piers for 36 years.

Q. I thought you said you came to this pier in 1940.

A. I thought you said "piers".

Q. Piers 1 and 2.

A. I have been here for four years.

Q. Approximately two years before the government took over and two years since?

A. That is right.

Q. How has the volume of freight handled now compared with what it was when you were there the first year?

Mr. MacGUINEAS. I am required to object to that question on the ground of military security.

The WITNESS. I can not answer that. That would go back to a tonnage statement.

Mr. MacGUINEAS. A person who knew the past figures would be able to compute the present tonnage.

Mr. Cousins. Did you take these things into account in asking your direct questions?

Mr. MacGUINEAS. Certainly.

Mr. Cousins. This puts us to a great disadvantage. I do not want to ask any questions that have any bearing on the security of the country, but it puts us to quite a disadvantage when counsel leads these witnesses through all sorts of testimony, then raises these points on cross examination. We should be told in advance what points the witness can not be questioned on.

144 Mr. MacGUINEAS. I would like to state on the record that the limitation of military security puts the complainant to just as great disadvantage because we are prevented from bringing out details which we would like to bring out.

Mr. Cousins. Will you ask the witness in my behalf what he can say as to a comparison of traffic today with what it was when he came on the pier, whether he can use the word "substantial"?

Mr. MACGUINEAS. If you want to ask him whether there is a greater volume today, I will not object to that.

Mr. COUSINS. Many times greater.

Mr. MACGUINEAS. Substantially greater. I do not even know whether we are permitted to say "many times greater."

Exam. DISQUE. I think we can all assume it is many times greater without the record showing it specifically.

Mr. MACGUINEAS. Whatever you want to assume you may, but we are under limitations as to what we may put in.

Mr. COUSINS. I wanted to ask you whether the operation of unloading the cars and disposing of the freight today is faster than it was when the Transport Trading and Terminal Company was operating there.

The WITNESS. I would not say the discharge of the cars or the moving of freight was faster. In fact, I think it has slowed up a little bit.

145 Q. (By Mr. COUSINS). Why?

A. There seems to be a certain tendency amongst the labor right now. When we get some labor to work for the government they imagine they do not have to move as fast as when they are working commercially. We can not talk with these colored help right now. They want to walk off and they can walk off this Army Base and walk into the next Army Base and get another job. But when we were not doing so much, we could chase them off and they would be glad to come back later.

Q. Are you speaking of the same employees that worked for your former company or of the new class of stevedores today?

A. There are a few of the old ones left. The new ones are coming in every day. It does not make any difference, they all seem to get that one movement and that one attitude.

Q. Do the troops engaged in their work with the same lackadaisical attitude?

A. You have to get officers over them or else they will lay down on the job, too.

Q. When your company was operating the terminal, how many locomotives did you have in service?

A. The Belt Line used to furnish one and two when we were real busy. We had one of our own, which the Maritime Commission had. It was given to us. That is, it was part of the terminal equipment that came over to us to take care of and operate.



Q. What did you use your own locomotive for?

146 A. The same as we would the Belt Line,—switch cars here and there into the pier when we ordered them in.

Q. In your opinion, Mr. McCready, could your company have continued to operate the business up to the present time if the government had not interfered with that possession?

A. I believe they could.

Q. To handle the traffic today?

A. I think the traffic could be handled. The book work could be handled. On the question of labor, without the military personnel to go with it, we could not. If it is tied down to civilian help, I would say, no, they could not handle it.

Mr. Cousins. That is all.

Q. (By Mr. REYNOLDS). Did you testify as to whether or not the railroads paid the Tidewater Terminal and Transport Company for wharfage and handling?

A. As far as I know they have. We were the acting agents for them. We unloaded the cars, representing them.

Q. You had a contract with them?

A. That is right, we did.

Q. Do you know whether or not the Army has any contract with the railroads?

A. From what I hear, I believe not.

Q. Did the Transport Trading and Terminal Corporation receive any freight consigned to itself which it exported?

147 A. No, sir.

Q. Did it receive from vessels any import freight consigned to itself?

A. No, sir. We operated through the local steamship agencies and shipped out on their instructions.

Q. I did not catch that.

A. We operated through the agent of the steamship, whichever ship was going into a berth, and loaded the cars out under their instructions.

Q. You also operated as agent of the railroads?

A. That is right.

Q. You did not receive consigned through yourself any export or import traffic?

A. That is, through the Transport Trading and Terminal?

Q. Yes.

A. No, sir.

Mr. REYNOLDS. I have nothing further.

Q. (By Mr. WAGNER). Are you certain about that last answer of yours? There was no traffic consigned to your company at the Army Base?

A. Not any export or import freight.

Q. How about tobacco?

A. Tobacco was consigned to us for storage for various accounts.

Q. Was it not consigned to you as consignee?

A. We issued negotiable bills of lading on it.

148 Q. You were the consignee, were you not, of much traffic yourself—

A. No; I would not say we were the consignee. We were the consignee—in other words, I would say we were the consignee for it to be shipped in. We were the custodians of it and issued negotiable receipts in the consignee's name. We would store it for the consignee's account. The consignee did not have an office at the Army Base. We would take that tobacco: It had to be addressed to the Transport Trading and Terminal. It was ordered stored for his account, then ordered out by the consignee for export when the ship arrived.

Q. Was it ever consigned to your company as consignee?

A. I will say yes, consigned to our company as consignee, to be held for the original consignee or owner.

Q. Is it not true that the cost of tiering traffic today at the Army Base is very much in excess of what it was when you were operating for the Transport Company?

A. I think that question came up a minute ago. I could say greater.

Q. In other words, the higher you tier your traffic the greater your cost?

Exam. DISQUE. You mean per 100 pounds or in the aggregate?

The WITNESS. At the present time we have such a short time to work, we have got to build it up in there in order to work it 20 hours a day. We can not work 20 hours a day on it out of the car.

149 Q. (By Mr. WAGNER). And that increases your cost?

Mr. MACGUINEAS. Just listen to the question and confine yourself to answering the question.

Q. (By Mr. WAGNER). And does that not increase your cost?

A. It does in one way. In another it does not.

Q. You are conserving space, are you not, as you are building your traffic up?

A. Yes, sir.

Q. Does that not increase your labor cost?

A. In one way, yes; in another way, no.

Q. How about no?

A. Because we pilotize it. When we do that we can work shorter gangs, but so far it has not changed our method of unloading cars.

Q. I am not talking about unloading cars. I am talking about tiering your traffic after it gets out of the car. You are conserving space in your tiers?

A. Yes, sir.

Q. Does that not increase your cost, the higher you go the greater your cost?

A. That is true, yes.

Mr. WAGNER. That is all.

Q. (By Mr. REYNOLDS). One or two questions about this traffic that you said was stored at the piers.

150 A. What is that?

Q. I want to ask you a question or two about the traffic you said was stored at the pier.

A. The traffic?

Q. Did you not say in answer to Mr. Wagner that certain of the traffic received at the piers was stored there?

A. Tobacco. He said all traffic.

Q. Tobacco. Was that stored under a tariff provision that permitted tobacco to be stored for a certain length of time?

A. I do not know.

Q. In any event, the Transport Trading and Terminal Corporation did not own that tobacco, did it?

A. No, sir.

Mr. REYNOLDS. That is all.

Mr. COUSINS. That is all.

(Witness excused.)

EDWARD A. DOUGHERTY, was sworn and testified as follows:

#### Direct Examination.

Q. (By Mr. MACGUINEAS). What is your present occupation, Mr. Dougherty?

A. I am in Freight Operations and Allocation of the Water Division.

Q. Were you formerly employed by the Transport Trading and Terminal Company?



151 A. Yes, for two years.

Q. During what period of time?

A. July, 1940 to July 16, 1942.

Q. Are you familiar with the office records and books of your company in general.

A. Partly.

Q. Are you familiar with the allowances which the Transport Trading and Terminal Company received from the carriers for performance of car unloading and loading at the Army Base Piers Nos. 1 and 2?

A. Yes, based on the tariff.

Q. Can you state in general what the amount of those allowances were?

A. Well, from absorption territory one cent a hundred wharfage and 3 cents a hundred handling.

Q. And that was subject to qualifications in specific instances in the tariff?

A. Yes, sir.

Q. Were you also employed by the Norfolk Tidewater Company?

A. Yes.

Q. What was that company, Mr. Dougherty?

A. Norfolk Tidewater Terminal, Incorporated.

Q. What did they do?

A. They did the same thing as the Norfolk Tidewater Terminal operators.

152 Q. In other words, they were the predecessor terminal operator at Army Base Piers 1 and 2?

A. Yes, sir.

Q. How long did they function at that pier?

A. Fifteen years.

Q. During those fifteen years did the Norfolk Tidewater Company unload the cars on to the pier floor and load the import traffic into the cars?

A. That is correct.

Q. Did they receive the same allowance from the same carriers that Transport Trading and Terminal received?

A. That is correct, based on changes of tariffs and so forth.

Q. Do you know who acted as terminal operator of Army Base Piers 1 and 2 before the Norfolk Tidewater?

A. The Port Commission, City of Norfolk.

Q. Can you state when the Port Commission had it?

A. February, 1920, up until September, 1925.

Q. During that time did the Port Commission perform the loading and unloading services for the carriers?

A. They did.

Q. Did they receive the same allowance from carriers that these other terminal companies later received?

A. Yes, sir.

Q. Did you work for all these companies, beginning with the Port Commission on up?

153 A. Yes, sir, since 1920.

Mr. MACGUINEAS. That is all.

Cross Examination.

Q. (By Mr. REYNOLDS). Are you the Government yard master down at the Army Base Piers?

A. No. I did not say I was Government yard master.

Q. I did not catch what you said. I was asking you for information.

Mr. MACGUINEAS. For the record, are you an office worker?

The WITNESS. Yes; I am in the office with the Water Division.

Q. (By Mr. REYNOLDS). What are your duties?

A. In freight operating and allocation, allocating the freight to the piers for the various vessels.

Q. Who gives you your instructions?

A. Who gives me my instructions?

Q. Yes.

A. Newport News, Water Division.

Q. That is a part of the Army?

A. Yes, sir.

Q. Suppose you wanted a car put down on Pier 1 and Pier 2, whom do you call on the telephone—the railroads or the Army Yard Master?

A. We allocate the freight to the piers and the pier superintendent or the Marine superintendent orders  
154 it for his various vessels based on what we have allocated.

Q. Do you allocate by cars or by volume or what?

A. By car numbers.

Q. Do you not have to get the car down there after you allocate it?

A. Yes; that is a pier operation. They get them down there.

Q. Whom do you tell to put the car on the pier?

A. The pier contacts the rail transportation.

Q. Does it not contact the yard master?

A. Through the yard master. He works for the rail transportation and the Navy. In other words, he is yard master of the entire base.

Q. Whom does he get his instructions from?

Mr. MACGUINEAS. I object to this question. It appears from this man's testimony that his official duties are confined to allocating the traffic, deciding what traffic is to go on to what pier. He has stated he has nothing to do with the actual pier operations or ordering the delivery of cars to the piers.

Mr. REYNOLDS. If he has nothing to do with it and the record will so show, I will stop right here.

Mr. MACGUINEAS. Is it not correct, Mr. Dougherty, that it is no part of your job to order the cars on to the pier?

The WITNESS. That is correct.

Mr. REYNOLDS. Very well, I have nothing further.

155 Mr. MACGUINEAS. That is all.

(Witness excused.)

EDWARD J. HEAD, was sworn and testified as follows:

Direct Examination.

Q. (By Mr. MACGUINEAS). State your present position, Mr. Head.

A. I am comptroller of the Port of Embarkation and the chief of the Audit Section.

Q. Chief of what?

A. Chief of the Audit Section.

Q. Will you briefly describe your official duties in that position?

A. I supervise all of the accounting methods and auditing methods in connection with the port. I supervise all of the accounting and auditing operations.

Q. In other words, is it correct to say that generally you are the head accounting officer for the port?

A. That is one of my titles.

Q. Is it part of your official duty to maintain cost records?

A. Yes, sir.

Q. Do you maintain cost records covering the cost to the Army of the loading and unloading services at Army Base Piers 1 and 2?

A. Yes, sir.

Q. Have you prepared a cost study of the cost to  
156 the Army of performing those services?

A. Yes, sir.

Mr. MACGUINEAS. May we have this marked for identification?

(Complainant's Exhibit 6, Witness Head, marked for identification.)



Q. (By Mr. MacGUINEAS). Was this cost study prepared under your direct supervision?

A. Yes.

Q. Are the figures therein taken from the official records of the War Department?

A. Yes, sir, for piers 1 and 3 at Norfolk Army Base.

Q. What is the cost per hundredweight?

Mr. COUSINS. I object to that.

Q. (By Mr. MacGUINEAS.) Of unloading freight from the car on the pier track on to the floor?

Mr. COUSINS. Objected to. I do not think the witness should give a conclusion before he tells us something about this exhibit.

I want to know how the study was made and whether I am going to have an opportunity to cross examine about the amount and character of the traffic that is included in this study.

Mr. MacGUINEAS. I will state for the record that the study itself relates to the cost of unloading a specific number of tons and pounds also.

Mr. COUSINS. I will want to find out how that relates to the total and whether—

Mr. MacGUINEAS. I am sorry, you will not be able to find that out because we are not permitted to divulge that information.

Read my last question to the witness, please.

(The last question was read by the reporter.)

Exam. DISQUE. Let us change that a little and say, according to the computations you have made in this exhibit.

Mr. MacGUINEAS. Very well.

The WITNESS. The direct cost is 4.6 cents per hundred pounds.

Q. (By Mr. MacGUINEAS): Will you describe what elements of cost you have included in making this cost study?

A. The direct cost of the casual labor in the matter of the actual unloading from the railroad car to the pier platform. By that I mean the actual time spent in the unloading, because we have kept accurate records of only that portion of the work performed from the railroad car to the pier platform and the supervision by the checkers of those casual laborers.

Q. Are those supervisory costs set forth in detail on page 2 of your exhibit?

A. Yes, sir, they are.

Exam. DISQUE. Would these costs vary with the amount of traffic?

Mr. MACGUINEAS Perhaps this explanation will clarify  
158 the statement.

Q. (By Mr. MACGUINEAS). Is it correct, Mr. Head, that this study represents the actual cost figures for a period of 31 consecutive days in 1944?

A. It does.

Exam. DISQUE. Of all the traffic handled?

The WITNESS. Of all the traffic handled.

Exam. DISQUE. If only half of that traffic had been handled in that time, would the cost per hundred pounds be materially different from what is shown?

The WITNESS. In my opinion, it would not be.

Q. (By Mr. MACGUINEAS). You say in your opinion it would not be?

A. It would not be, no.

Q. Well, in your opinion, does this cost figure of 4.6 cents per hundred pounds fairly represent the actual cost that the Army has incurred in unloading services since June 15, 1942?

A. I would say yes.

Mr. MACGUINEAS. That is all on direct examination.

Mr. DONADIO. Did I understand you to say this study covered 31 days?

The WITNESS. Yes, sir. The heading of the exhibit so states.

Exam. DISQUE. What is the purpose of this evidence?

Mr. MACGUINEAS. The purpose of this exhibit is to show the actual cost to the Army of performing the services which we contend either should be actually performed by the carriers or an allowance should be granted to the Army for doing it.  
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Exam. DISQUE. Even if you should get a 4 cent allowance you would still be out six-tenths of a cent?

Mr. MACGUINEAS. That is correct.

Could I clarify that further?

Q. (By Mr. MACGUINEAS). Is it correct, Mr. Head, that this cost figure as represented in this study does not include in any way the elements of cost that may be involved in wharfage?

A. No. There would not be any cost—this would be purely a direct cost of the unloading of the railroad car by casual labor and the direct supervision of that casual labor.

Q. So that whatever cost the Army may be incurred as owner of the pier or as operator of it—

A. That would not be included.

Q. That is not included in this study?

A. That would be an indirect expense.

Q. One further statement which may clarify the matter. Our complaint asks in the alternative for an allowance of 3 cents per hundred pounds for loading and unloading in addition to the 1 cent per hundredweight wharfage.

This cost study, however, is not concerned with wharfage.

A. That is right.

Cross Examination.

Q. (By Mr. Cousins). What is this first figure of 28,967 tons?

160 A. That is the net tons based on your total pounds in schedule 2; 57,933,810 pounds divided by 2,000 gives you the 28,967 net tons.

Q. Now, tell me, what does it mean? Where did you get the 28,000 tons? Where did you get that figure?

A. I am telling you. 2,000 pounds is a railroad net ton. So you divide that into your pounds.

Q. Where did you get your pounds?

A. Your pounds is in Schedule 2. 57,933,810 actual. I should say Schedule "B".

Q. What I want to know is this: Is the 28,000 ton figure the entire tonnage of freight that was handled over Piers 1 and 2 during the 31 days?

A. Yes. That is, it is the tonnage actually handled by casual labor as unloaded from railroad cars to the pier platform.

Q. That is casual labor?

A. The labor that is used in connection with unloading the cars, the same as they did under the terminal operation.

Q. Was there some more tonnage loaded by some other kind of labor?

A. Not that I know of.

Q. Then you can not say "yes" or "no" as to whether this tonnage was the entire tonnage unloaded from the cars to ship during the 31 days?

161 A. I can say it is the unloading of the railroad cars, from the railroad car to the pier platform, not to the ship.

Mr. MacGUINEAS. Do you understand that counsel is asking whether this includes tonnage unloaded by Army labor?

The WITNESS. Does it include—no, this tonnage—are you speaking now principally of what the tonnage is in this study? This is the actual unloading covered by civilian labor.

Q. (By Mr. Cousins). I am asking you a very simple



question. Is this all of the tonnage that was unloaded from the cars during the 31 day period?

A. It is all the tonnage, yes, unloaded to the pier platform.

Q. Where was the rest unloaded to?

A. There is tonnage that is loaded from the railroad cars direct to ship that is not included in there. We do not have any concern over that particular item.

In other words, if you handled a car direct from car to ship you have no problem of unloading to the pier platform.

Q. You are talking about open cars?

A. Generally speaking, about the large stuff they handle by crane.

Q. Open cars?

A. That is right.

Q. We are not concerned with that in this case.

A. What we have done—let me make it clear to you: We have kept an exact detailed record daily of every car that came in over the pier that was unloaded by civilian labor from the railroad car to the pier platform.

We kept a record of the tonnage, which was verified by the traffic office, the transportation office.

At the same time we kept a detailed time-check record of the actual number of people involved as to man hours, as to the casual labor and the checkers, so you have your direct cost and you have your tonnage as your basis.

Exam. Disque. Did any soldiers unload any freight during this 31-day period?

The Witness. No soldiers loaded any freight during this particular 31-day period. That is the answer.

Q. (By Mr. Cousins). Evidently this must not have been one of your busy times?

A. Yes, it was busy.

Q. This was not one of your peak times when you had to resort to troops to unload the cars?

A. This study takes into consideration only the civilian casual labor that unloaded the railroad cars. That is what I am trying to tell you. Whatever few cars might have been unloaded or unloaded by enlisted personnel or direct from car to ship, we did not consider in this particular study.

Q. All I am trying to find out from you is: Was there some of that during the 31 days?

A. Yes, sir, I would say so.

Q. I have asked that eight different ways forward and backward. Do you call this 31-day period your representative period?

A. I would say so. The same conditions prevailed over prior periods.

Q. Are you satisfied with the answer you made to the Examiner that your costs would not vary as the amount of tonnage increases or decreases over the pier?

A. I would say that it would not generally vary for this reason, that as our tonnage increases we would have to increase our personnel to handle it.

Q. Was the personnel whose wages you have included in here employed full time in unloading the cars shown on this study?

A. Absolutely.

Q. They did nothing else?

A. They have been employed full time as far back as I know, since the port started.

Q. I want to know whether they spent their entire time during the 31 days in handling this 28,000-tons of traffic?

A. Yes, sir, they did nothing else but that.

Q. How long have you been on these piers?

A. I have been with the Port of Embarkation since September 6, 1942, coming down from the United States Engineers' Office in St. Louis, the United States Government.

Mr. COUSINS. That is all.

Exam. DISQUE. You do not know why it costs you 164 more than private pier operators to do this work?

The WITNESS. I never went into that. My work consisted entirely of government work.

Q. (By Mr. REYNOLDS). How much of the total of \$25,513.68 representing wages is for overtime?

A. I will have to get my work sheets to get the overtime as computed in connection with this schedule. I did not bring the figures with me. There is overtime computed. There was overtime performed.

The amount of overtime performed depends on the tonnage loaded into the ships, you understand that. The number of gangs working will depend on how much is loaded.

How much the exact overtime is, I can not say right now, but I can refer to my sub-schedule I have in my office.

Q. Can you state approximately how much is overtime?

A. Offhand, no, I can not.

Q. The cost of unloading from railroad cars to piers varies with the kind of traffic handled, does it not?

A. Oh, not to my knowledge, it does not. We handle all kinds of cargoes, for instance, as far as the United States Army freight is concerned. We keep a daily record of the tonnage as to the classification or commodity and the tonnage. We do not classify it.

Q. You have arrived at a figure of so much per hundred pounds. The weight of the traffic would have something to do with it, the weight density of the traffic—

A. You are speaking of the various commodities?

Q. Yes.

A. Yes, I think so, but we make no distinction, because we put the actual weight down on each car.

Q. The weight density of the traffic does have an effect on the cost of unloading, does it not?

A. I do not quite get what you mean. It does not have a bearing in the total overall cost in this respect: when you take a railroad car, you get the actual tonnage, and you get the actual direct expense, and you can then get your ratio.

Q. It costs more to unload a hundred pounds of feathers than it does to unload a hundred pounds of lead, does it not?

A. That is a question I do not think affects us as far as we are concerned, and I refer to Army freight. We do not handle feathers.

Q. You handle freight that varies in weight, do you not?

A. We handle all types of freight. We handle subsistence, trucks, cars, jeeps, everything we handle.

Q. You have reduced your cost to so much per hundred pounds. I am asking you if the weight density of the traffic that you unloaded did not have a material bearing upon the cost per 100 pounds of unloading the freight from the car to the railroad piers?

166 A. As I understand it, you are speaking now that the rate would be different on commodities?

Q. I said weight.

A. The weight is what you are speaking of?

Q. Weight density.

A. The point is, as far as this cost study is concerned, we are talking about total weight regardless of commodity.

Q. I understand what you are talking about, Mr. Witness, but you have here a cost which you say is 4.6 cents per 100 pounds.

A. That is right.

Q. I am asking you if your cost does not vary according to the weight density of the particular traffic that you are unloading from the car to the pier.



A. It would vary in the matter of certain different cars and the commodity unloaded, but we are taking a total 31 day study of all United States Army freight.

We are not classifying that particular freight. We are not classifying it as to commodity.

Q. I understand that. For what period of time was this cost made?

A. I am unable to answer that question.

Mr. MACGUINEAS. We can not specify the particular dates.

Mr. REYNOLDS. Then I move that the exhibit be stricken out and all of the witness' testimony in support thereof.

If we can not go into the exhibit to the extent of showing the period covered by the exhibit, I think it should be stricken out because it places us at a serious disadvantage.

Exam. DISQUE. It is a weakness in their exhibit, but it is due to the necessity for security.

Mr. MACGUINEAS. Suppose we would assume this covered March of 1944, what effect would that have on your case?

Mr. REYNOLDS. It might have a very serious effect.

We know what traffic moves over these piers, we know what traffic moved over those piers during the different months, and, as I tried to bring out by the witness, the cost he has here varies with the different traffic handled during any given period.

Exam. DISQUE. Your objection goes to the weight to be given to the exhibit.

Mr. REYNOLDS. It goes farther than that, Mr. Examiner.

Of course, if the complainant says that security prevents the information being divulged, I am not going to press it, but still if security does prevent the information being divulged, I do not think they should undertake to prepare a cost study and put it in evidence in this case.

Exam. DISQUE. Your objection goes to the weight of the evidence.

Mr. REYNOLDS. No, I think it goes farther than that. It goes to the competency of the exhibit.

We certainly should not have to sit here and accept anything they put in without the right to cross examine.

Exam. DISQUE. Can Mr. Head say whether or not this is a representative 31 days?

Mr. REYNOLDS. If he says that, I want the right to go into it.

I certainly do not want to be bound by his statement that it is a representative month.

Mr. MACGUINEAS. Let me ask him, if I might interject—

Mr. REYNOLDS. I object to that.

If we are not going to be permitted to determine the period covered by the exhibit, then I object.

Mr. MACGUINEAS. May I state my question, then make your objection?

Q. (By Mr. MACGUINEAS). In your opinion, Mr. Head, is the 31-day period which has been selected as the base for this cost study a fairly representative period as to the variety of traffic and costs throughout the entire two year period of Army operations?

A. I would say so.

Mr. REYNOLDS. I object to that on the ground—

Exam. DISQUE. If it were not for security considerations, the question would be all right.

Your difficulty is you can not cross examine him without developing some facts that should not be divulged.

Mr. REYNOLDS. That is it.

169 Exam. DISQUE. Technically, that would make the evidence inadmissible, I think, but what the Commission may think about that in time of war, I do not know. It does put you at a disadvantage and deprives you of your constitutional rights, technically.

Mr. REYNOLDS. I agree with the Examiner.

Exam. DISQUE. But in time of war what the Commission may think of it, I do not know.

Mr. REYNOLDS. Far be it from me to ask any questions that should not be divulged for security reasons.

I certainly do not think we should be put to disadvantage because of that. I think the complainant here should accept some of the disadvantages and not put it all on us.

Exam. DISQUE. If we were dealing with some important part of the case, I would be inclined to rule it out without question.

Technically it ought to be ruled out, but this part of the case is unimportant.

Mr. MACGUINEAS. We are assuming some of the disadvantages because we must now expect that lack of credibility is to be given to this exhibit because we can not disclose the specific dates.

Exam. DISQUE. They can not answer your testimony.

Mr. MACGUINEAS. The burden falls on both of us.

170 May I say for the record that we actually prepared the exhibit giving the specific dates but military in-

intelligence insisted that they be deleted. So the burden falls as much on us as it does on the carrier.

Mr. REYNOLDS. I do not see how you can say that.

Exam. Disque. You are trying to take money away from them.

Mr. MACGUINEAS. We are trying to take the money away from them that they have been withholding from us.

Mr. COUSINS. They can not ask any reparation because they would have to show the total amount of tonnage and that is prohibited by military secrecy.

Q. (By Mr. REYNOLDS). I will ask you one other question.

Do you know whether or not any of the traffic, any of the 28,967 tons, moved on shipside rates?

A. I know that all of the freight as recorded during that 31-day period came in by line haul, as far as I know.

Q. Do you know what I mean by shipside rates?

A. No, I do not.

Q. (By Mr. COUSINS). Let me ask you a question, and your counsel can raise the danger signal when we get into trouble.

You have shown here 28,000 tons in a period of 31 days.

A. Yes, sir.

Q. General Kilpatrick told us about the peak periods and how convoys were being loaded. We saw seven ships lying at your pier for loading last night. Yet 28,000 tons in 31 days would not fill the tail end of a convey.

171 Where is the rest of the traffic?

A. That is what I have explained. I said to you a big part of the traffic that comes in direct from car to ship. We have no—it would have no bearing on this particular study.

We are concerned only with that freight that is unloaded from the railroad to the pier platform at Army Base Piers Nos. 1 and 2.

Q. The great preponderance of freight comes in in open cars, does it not?

A. I could not say that myself personally how it comes in, but there is a good portion of it that is loaded direct from car to ship.

Q. Can not anybody who does not know anything about military affairs look at 28,000 tons and say that that is not going to load many ships?

A. It depends on what the person knows about what the capacity of a ship was. To begin with, that is the net tons.



Your loading tons is in cubic measure. You have two different measures to go by.

Q. What fraction of the freight is this figure of the total amount passed over your pier in the same 31 days?

A. I can not tell you.

Mr. MACGUINEAS. I object to that.

Q. (By Mr. COUSINS). Will you tell us whether it is 2 per cent or 50 per cent, one or the other?

A. I can not tell you unless I look up a complete record which I have not available.

Q. It might be just 2 per cent?

A. I could not tell you that. I could not make an exact statement on that.

Q. What are the hours of your casual labor on the pier?

A. The hours of the casual labor, according to the agreements they operate under, which are the old terminal agreements, is from 8:00 to 5:00 and a half day on Saturday. Anything after that time that they work is generally considered under those labor agreements as overtime or time and a half.

Q. When you are operating around the clock the way the General described, how many hours does a man work who is employed as a casual laborer?

A. On an average, 11 to 12 hours.

Q. All right. If you take page 2 of your exhibit and divide the total hours worked by the number of men there you get 202 hours per man for 31 days.

A. Divide that by 31.

Q. Which is an average of 6 hours per day?

A. That depends upon the way the gangs are worked. The point is it depends on how the ships come in. I do not know that that is right. We have computed—

Q. You have not many days in here of your peak periods when men worked around the clock, have you?

A. Let me explain in answering the question so it will be clear to you. We have had eight casual officers in the matter of checking and loading—that is, the unloading of the railroad cars to the piers for the 31-day period night and day.

We have only got in that record the actual number of hours that were performed in the unloading of those railroad cars to the pier platforms. I can positively state that.

Q. You have told me that the 111 men did nothing else in the 31 days but that particular job.

A. That is true. I can not answer your question because you figure out it is 6 hours. I say on the average, to the best of my knowledge, they averaged about 11 hours a day.

Q. But here they average six hours a day.

A. I have not computed that. Do you want me to compute it? I will tell you.

Q. O. K. I am doing it for you.

A. I would sooner do it myself, then I will know it is right. You are telling me something.

Q. Go ahead and divide it.

A. You have 111 casual laborers working 31 days, is that right? The total number of hours they worked is 2,272; is that correct?

Q. I can read your exhibit. They worked 22,732 and a quarter hours.

A. 22,732 hours, that is right.

Q. All right. Divide one by the other.

174 A. About 7 hours. 6.7 hours, if you want to be exact. You say 6 hours. There is a big difference between six and six and seven-tenths of an hour.

Q. What is your figure, — 6.7?

A. 6.7.

Q. Hours per day?

A. That is right, based on these figures.

Q. How do you explain, then, the fact that you tell me your men worked 11 and 12 hours a day on the average, and it has been testified here that you can not get enough casual labor to do the job properly, yet you say you are only working 6.7 hours per day.

Mr. MacGUINEAS: Just a minute.

The witness did not testify to that. He said they worked 11 and 12 hours a day on the peak loads or rush loads, which is a different matter.

The Witness. You are taking this actual figure here, which would have to be broken down. The only way I could show it to you would be to actually show you the daily cost sheet. The time and the tonnage is actually on that sheet for each particular man.

Q. (By Mr. Cousins). Did the Army ever employ a stevedore company to come in and perform this work of unloading cars?

A. No, sir, not to my knowledge, as far as I know.

Q. It has always done it with its own employees?

175 A. It has always done it with the same labor. The stevedore labor is a different operation entirely. The stevedores load from the pier platform to the ship.

Q. I understand that: I want to know why all of these people shown in your study on the Army payroll—or are they on the payroll of some company?

A. They are on the Army payroll.

Q. You have not employed any outside company like Jarka & Company, or the Lincoln Tidewater Terminals, or any other such company to perform this service at the Army base?

A. That is correct.

Q. Is that correct?

A. That is correct.

Q. Do you have anything to do with the work over at the United Nations Depot?

A. I have very little to do with the United Nations Depot. I cover Newport News—Newport News and Norfolk terminals from the general accounting standpoint. I very rarely go up to that particular point.

Q. Do you do the accounting for that terminal?

A. The accounting for any particular terminal that would be over in Norfolk would come through the N. A. B. records.

Q. I understand, then, you are familiar with the accounting of the United Nations Depot; is that correct?

A. If it is a part of the N. A. B. Base; yes, I am.

Q. Well, is it?

A. Certainly it is.

176 Q. How much do you pay for the unloading of freight at that base?

A. At what base?

Q. At the pier known as United Nations Depot?

A. How much do we pay?

Q. Yes.

A. Why, I would say it is the same rate of pay as far as laborers are concerned, 64 cents an hour.

Q. You do not hire laborers there, do you?

A. If we have the same conditions there.

Q. Do you have laborers on your payroll that are performing that work on that pier?

A. As far as I know, the only laborers we have are working on Norfolk Army Base 1 and 2, that pier or piers and the United States Army payroll.

Q. Do your records show that you pay the Lincoln Tidewater Terminal Company for doing work at United Nations Depot?

A. To our records show that?



Q. Yes.

A. The Army Base records would show that.

Q. What do you pay that company for unloading cars?

A. I can not answer your question, I do not know.

Q. Why not?

A. Because I do not know the exact figure that they pay.

I am not familiar with that contract.

177 Q. Have you not seen the records?

A. No, I have not seen the records.

Q. Is it as much as 92.4 cents per ton?

A. I could not answer that.

Q. What do you have to do with the accounting between the Government and the Lincoln Tidewater Terminal?

A. What do I have to do with that directly?

Q. Yes.

A. I have nothing to do directly with it as far as the contract was entered into by the Army with the company.

The payment is made through the funds of the fiscal office.

Q. You do not approve the bills or audit them?

A. I do not pay the bills. They go directly to the fiscal office. I take care of the N. A. B. operation only, 1 and 2, and also Newport News.

Mr. COUSINS. That is all.

Q. (By Mr. WINN). Did you make any cost studies in the same way for other periods?

A. Different periods of time on the same basis?

Q. Yes.

A. No, sir, I did not. This particular study I made over that 31-day period.

Q. So that you do not know from a cost standpoint whether this is a typical period?

A. No.

178 Q. Or a typical cost check?

A. You mean like a spot check?

Q. Something like that.

A. I would say that due to the conditions such as they are at N. A. B. 1 and 2, with the continuation of the handling of cargoes for the various ships, that would be more or less representative for the past periods as well as the period that is covered.

Q. You made no cost studies or checks for any other period?

A. No, I have not.

Mr. WINN. That is all.

Mr. MACGUINEAS. I have a few questions.

## Re-direct Examination.

Q. (By Mr. MACGUINEAS). Mr. Head, is it correct that under your cost study direct labor comprised approximately 92 per cent of the entire cost that you have charged to this operation?

A. I would say yes, that is about right.

Q. Is there any stevedore labor charged in that cost at all?

A. There is no stevedore labor at all. That is only covered by the actual labor paid by the Army for unloading of the car to the pier platform.

Q. Mr. Head, have you made any computations to determine what the actual cost of performing this service would have been if the employees had worked 100 per cent at straight time rates?

A. Yes, sir, I have.

Q. That is to say, if you had eliminated all overtime.

A. Yes, I have done that.

Q. And on that basis, what is the cost per hundredweight to the Army?

A. I will have to get that. On that basis the cost figure is 3.5 cents per hundred.

Q. (By Mr. REYNOLDS). Why did you tell me you did not know how much of this \$25,512.68—

A. I have summary figures here. I can not give you the exact figures you asked for. You asked me how much the percentage was of the overtime. I could not answer that correctly and nobody else could if they did not have their records here.

Mr. COUSINS. Will you now turn that also into net tons for our convenience?

The WITNESS. You mean the last schedule referred to?

Mr. COUSINS. Yes.

The WITNESS. 720.

Q. (By Mr. MACGUINEAS). Translate 3.6 cents per hundredweight into a cost per net ton. What do you get?

A. 69.5 cents per net ton.

Mr. REYNOLDS. I would like to ask a question.

If the laborers worked from 6 to 7 hours a day, would they get paid for a full day's work?

180 The WITNESS. They would only get paid for the hours they actually worked.

Mr. REYNOLDS. Are you certain about that?

The WITNESS. I know positively that they do not get paid, only for the time worked because the time sheets are cer-

tified for the actual number of hours expended on United States Army work.

Mr. REYNOLDS. That is all.

Q. (By Mr. DONAIMO). Did you say that the per hour rate of pay was 64 cents?

A. For a common laborer.

Q. For casual labor.

A. Yes. The checkers are 95 cents per hour.

Exam. DISQUE. Why do you call them casual laborers?

The WITNESS. It is a term we use, a term that they use in connection with a pool of laborers, where they give them certain labor assignments. They get a pool of labor, they give them a job here and there, they assign them, they get them in a pool, and they call them casual labor and then they make these assignments.

Mr. MACGUINEAS. That is all.

(Witness excused.)

Mr. MACGUINEAS. Mr. Examiner, I offer in evidence Complainant's Exhibit 6, Mr. Head's cost study.

Exam. DISQUE. Received subject to objection.

181-182 (Complainant's Exhibit 6, Witness Head, received in evidence.)

Exam. DISQUE. We will adjourn now until 9:30 tomorrow morning.

(At 5:15 p. m., the hearing adjourned to Wednesday, July 19, 1944, at 9:30 a. m.)

183 Norfolk, Virginia, Wednesday, July 19, 1944.

Hearing resumed at 9:30 a. m.

BEFORE. W. A. DISQUE, Examiner.

APPEARANCES. As heretofore noted.

#### PROCEEDINGS

Exam. DISQUE. Proceed, Mr. MacGuineas.

HAYS M. HEIMBAUGH, resumed the stand and testified as follows:

#### Direct Examination.

Mr. MACGUINEAS. Will you mark this for identification, Exhibit 7?

(Complainant's Exhibit 7, Witness Heimbaugh, marked for identification.)

Q. (By Mr. MACGUINEAS). Major Helmbaugh, since June 15, 1942, has the Army paid to the carriers the applicable tariff rates on export and import traffic moving over the



Army Base piers without any deduction or allowance for wharfage or handling?

A. It has.

Q. How have you determined that to be so?

A. I have examined the payments made by the Army on typical shipments which are shown in the exhibit which has just been distributed and which shows the billing reference, including the reference to the freight bills rendered by the carriers and the voucher number, date of payment, and the amount of the payment and the charges for each of these shipments.

184 Mr. MACGUINEAS. That is all.

Exam. DISQUE. You are asking reparation on all shipments that you have made within two years of the filing of the complaint?

Mr. MACGUINEAS. Yes, that is correct, since the Army took over the base.

Exam. DISQUE. Were all shipments received by you shipments on which the government paid the freight charges?

Were there any shipments on which the government did not pay the freight charges?

How do we know that on these shipments you paid the freight charges?

The WITNESS. We paid the freight charges on shipments moving on government bills of lading or on shipments moving on commercial bills of lading converted to government bills of lading.

Exam. DISQUE. These are the only shipments on which you will ask reparation?

The WITNESS. We are asking also for reimbursement to the extent that we are bearing the handling and wharfage charges on commercial shipments that moved over the pier for which we have not received reimbursement from the carriers so far.

Exam. DISQUE. How do we know what shipments they were?

The WITNESS. Those are matters of record, both in the carriers' files and in our records, which can be determined by a check of the shipments.

185 Exam. DISQUE. That could be included in a Rule 100 statement?

The WITNESS. That could be, yes, sir.

Exam. DISQUE. Cross examine.

Cross Examination.

Q. (By Mr. COUSINS). Major, have you the bills of lading that cover the shipments shown in this exhibit?

A. I do not have the bills of lading. I have the freight bills.

Q. Do the freight bills contain all the marks shown on the bills of lading?

A. The freight bills refer by number to the bills of lading and our examination of the bills of lading show these data relating to export traffic.

Q. Do the freight bills contain this information that you spoke of yesterday which indicates that the shipments were for export?

A. No, as I recall they do not. If they do, it is incidental. I mean, there is no point in showing, for instance, the case number or anything of that sort on a freight bill.

A freight bill is a statement of the charges that the carrier renders to us for the services it performs.

Q. Have you any bills of lading with you?

A. I have the freight bills with me.

Q. You have not anything with you which will enable you to show how these shipments are designated as export shipments?

A. I have no freight bills with me covering export shipments.

Mr. MACGUINEAS. You mean bills of lading?

The WITNESS. I have no bills of lading with me covering export shipments.

Q. (By Mr. COUSINS). Is there any information on that paper which indicates what you had in mind yesterday with regard to the export designation?

A. What is this?

Q. You just look at it. That is a typewritten copy of the material placed on the bill of lading, not containing, however, the printed information.

Mr. MACGUINEAS. I do not think the witness ought to be asked to comment on what an abstract document, which has not been identified or in any way proven by the carrier, shows.

If you want to produce the bill of lading in full, that is one thing. This is merely some typewritten abstract, apparently.

Mr. COUSINS. It is not a typewritten abstract. It is a typewritten copy of what is put on the bill of lading with the typewriter.

I am not going to put it in the record. I am trying to find out what this car is. If the Major can find it, he can tell me. I have no other way of stating to him what it

187 He was talking about it yesterday.

Mr. MacGIBBS: There is no evidence as to who prepared this, how it was prepared, how complete or incomplete it is.

Exam. Discre: Maybe the Major knows what it is and he can tell us.

Mr. MacGIBBS: I do not think they are entitled to ask the witness to comment on it.

Exam. Discre: Let us ask the witness to talk on that exhibit.

Tell him what exhibit you want him to talk about.

Mr. COUSINS: The witness told us yesterday that some designations are placed on bills of lading which indicate both to the Army people and to the railroad that the shipments are for export. We were not able, to our satisfaction, to elicit from the witness what he meant.

Now I am showing him some papers which contain the kind of information we think we have, and I am wondering if he can find on it what he means.

Exam. Discre: Maybe he could bring a bill of lading at noon and tell us more about it.

The WITNESS: This says, "for export." This says "for export." Again I do not know what these are. All the information I have is what you have given me.

Q. (By Mr. COUSINS): I am not interested in your commenting on these papers. I want to know if you can find on them the designation that you were talking about so I can tell what it is.

188 A. Of course, if it is written "for export."

A. The O. D. T. block permit is shown on each of these.

Q. Is that what you meant yesterday?

A. I referred to these QMR releases.

Q. Is that all that you meant, that designation up there?

A. That would identify them.

Q. That is not what you refer to as a code number, is it?

A. No. The code number is something else again. You will frequently have the code number in addition. I mentioned there were several ways. For instance, the words "for export" appear on some. The O. D. T. block permit are all necessary and in addition you will have further these code numbers.

Q. Have you checked any shipments that were consigned to the Army Base which subsequently moved out by rail



to some other point and not actually exported from the base here?

A. I did not get the beginning of your question.

Q. I said, have you found any shipments in your study that were brought into the Army base as export shipments but not actually taken out by vessel, as such, but shipped elsewhere by railroad, say to Baltimore, Philadelphia, or some other place?

A. I have not found any, although there may be some. I was not looking for any.

189 Q. How are the railroads to know whether the shipments that come into this port actually go out by boat or whether they were re-shipped by rail to some other place?

A. We certify the freight bill that it is exported. We would not put that certification on here unless it has been exported.

Q. You certify on the freight bill?

A. Right. Would it help if I showed you a freight bill?

Q. With that certification on it?

A. Yes.

Q. Well, let us see one.

Mr. MacGUINEAS. Let the witness make the statement that he is offering these freight bills for counsel's inspection.

The WITNESS. These are samples of the freight bills I referred to for your inspection.

Q. (By Mr. COUSINS). You say, Major, this certification that the freight was exported appears on all of your freight bills when you pay the charges?

A. That is the condition that is referred to in the tariff. We will certify that the shipments have been exported and we do so certify.

Mr. COUSINS. That is all.

Q. (By Exam. DISQUE). You certify when you pay the freight charges?

A. We have a stamp, a certification stamp saying that the shipment was exported. I do not recall the exact  
190 wording. That is signed by a transportation officer at the port here.

Q. When is that certificate put on there?

A. It is put on before the freight bill is sent to the Finance Office, United States Army, for payment.

Re-direct Examination.

Q. (By Mr. MacGUINEAS). Will you read the wording of the certificate that is stamped on the freight bills?

A. It reads: "I certify that the contents of this car were

received in good order without exception and that the freight described herein was exported after unloading on April 6, 1944."

The date is filled in.

Exam. DISQUE. Who is "I"?

The WITNESS. That is then signed by M. J. Falsey, Second Lieutenant, Transportation Corps.

Re-cross Examination.

Q. (By Mr. REYNOLDS). Major, do the freight bills covering all of the shipments shown on your Exhibit No. 7 contain the certificate that they were exported?

A. I do not have all the freight bills shown on this statement.

Q. You do not have the freight bills covering all the shipments shown on Exhibit 7?

A. No; we have freight bills to the extent that we could get them.

Q. Will you state whether or not the rates on the shipments shown in Exhibit 7 were shipside rates or not?

A. I did not check the rates.

191 Q. You did not. Do you know whether the traffic contained in the shipments shown on Exhibit 7 came out of storage or moved from storage?

A. The only way I could tell you would be to refer to the freight bills I have to see whether or not they indicated any inbound transit references.

Q. You did not check that?

A. I did not check that.

Q. Were these shipments stored in the base before they were put on the ship, if they were put on the ship? In other words, did the freight move directly from car to ship or did it move from a warehouse in the base to the ship, assuming it was exported?

A. I have not made any inquiry on that point. This is a statement to show that the Army is paying the freight charges on these shipments that moved into the base.

Q. Is your stamp or certificate for export put on the shipment whether it is loaded direct from the car to ship or whether it is moved from warehouse to ship?

A. I did not ask the Lieutenant.

Mr. REYNOLDS. That is all.

Q. (By Mr. Dixon). Are the amounts paid on Exhibit No. 7 supposed to reflect the tariff rates or something else?

A. They reflect the amount actually paid to the carrier by the Finance Office, United States Army.

192 Q. Would that be on the basis of tariff rates, the published tariff rates?

A. Ordinarily it is on the basis of the bills submitted by the carrier.

Q. Look at the second last shipment, spaghetti from Memphis, Tennessee.

A. Yes.

Q. Amount paid \$470.27.

A. Yes.

Q. Here is the freight bill covering that shipment. It shows the charges as \$513.55.

A. Correct.

Q. Why is there that difference?

A. Why the Finance Officer paid a different amount than shown here I do not know, but the difference does not correspond to the amount of the wharfage and handling. On one of these bills, I do not recall which one, the Finance Officer paid a different amount than shown because of an arithmetical error in the freight bill as it was extended.

Q. I take it that the difference might also be accounted for through the Section 22 quotations or the land grant that were mentioned yesterday?

A. No; those settlements are made by the General Accounting Office in the audit and not the initial payment. If you render a bill based on the Section 22 quotation the chances are that the Finance Office will pay it.

193 Q. It is based on the tariff rates, and then later on it is cut by the GAO?

A. The Finance Officer pays the bill as rendered, unless there is some obvious error in that bill. He does not audit the bill. If there is an obvious error he does correct that. The audit of the bill is made by the General Accounting Office and that is sometimes as much as two years after the charges are paid.

Q. If these amounts on Exhibit 7 do not reflect the published tariff rates, what conclusion can you draw from the amounts shown?

In other words, what are they?

A. They are the amounts that the carrier asked us to pay for the work they had done. I assume that the carriers are issuing bills based on the tariff rate.

Q. Do you have the carrier's bill covering this shipment from Memphis? Maybe that will tell us the basis for the amount shown.

A. I do not have the tariff here, no.



Q. You do not have the carrier's bill?

A. I have it here. Let me check it. Southern Railway Freight Bill H-20555.

Q. Yes.

A. That is this bill here.

194 Q. I know it is, but the amount shown on your exhibit is not responsive to the amount shown on the bill.

A. That is right.

Q. A moment ago I think you said that the amount shown on Exhibit 7 was the amount covered by the carrier's bills. I just can not reconcile that. I asked you—

A. In general they are, yes. In general they are, but to the extent that the finance officer does not pay the bill as rendered, we have no way of knowing why he has made that deduction.

You will notice that the difference between the amount of the bill and the amount paid is not the same as the difference that would accrue if the wharfage and handling deduction had been made.

Q. The difference seems to be a little greater.

A. It is greater. It does not correspond to the wharfage and handling deduction.

Mr. Dixon: All right. Thank you.

(Witness excused.)

Mr. MacGUINEAS. We will offer in evidence Exhibit 7.

(Complainant's Exhibit 7, Witness Heinbaugh, received in evidence.)

Mr. MacGUINEAS. That concludes our *prima facie* case.

Exam. Dismiss. The defendants may proceed.

S. J. BURROWS, was sworn and testified as follows.

Direct Examination:

195 Q. (By Mr. Cousins). Mr. Burrows, are you superintendent of the Norfolk & Portsmouth Belt Line Railroad?

A. I am.

Q. In charge of the operations of that company here?

A. Yes, sir.

Q. That line serves the Army Base, switching in traffic received from the various trunk line railroads at Hampton Roads?

A. Yes, sir.

Q. Are you familiar with the manner in which cars are delivered to the Army Base?

A. Yes, sir.

Q. I ask you to look at Exhibit 2, Mr. Burrows. Near the top of that exhibit I think the Army Base is shown as Piers 12 and 13, is that right?

A. Yes, sir.

Q. Extending back from the piers in the direction which would be east on the map are some tracks labeled "U. S. Army Base Yards."

Upon whose property are those tracks?

A. The Government's.

Q. That is a part of the Army Base, is it?

A. Yes, sir.

Q. And the Government tracks extend, do they, all the way over to the right hand side of the map where they make a connection as shown there with the Virginian Railway?

A. That is correct.

196 Q. How does the Belt Line get to the Army Base?

A. Well, the Belt Line gets to the Army Base from the direction of Berkley Yard, which is our main yard, running over the Virginian Railroad on trackage rights, and coming in at a connection with the Virginian, which is known as Qm Junction.

Q. On the map that is the point at the right hand side where the Army Base tracks connect with the Virginian Railway?

A. That is right.

Q. How far would you say it is from that connection over to Piers 1 and 2?

A. From the Virginian connection to the piers—this would be my guess—I would say it is about  $2\frac{1}{4}$  miles from the Virginian connection to the piers. That would be my guess.

Q. Now, running north and south on the map, there is a highway, is there not?

A. Yes, sir, known as Hampton Boulevard.

Q. Now, what is the purpose of the yard track to the east of that boulevard?

A. The Government uses that for classification and storage of cars when they are not ready for them down on their piers and warehouses, as I understand it.

Mr. MACGUINEAS. Now, Mr. Examiner, the witness is now testifying to something of which he understands. In other words, he does not have knowledge of it. He does not function at this yard. He does not have to know what the government does.

197 The WITNESS. Well, I do know what they use it for.

Mr. MacGUINEAS. Are you down there at the yards?

The WITNESS. I am pretty familiar with it.

Mr. MacGUINEAS. Are you down there?

The WITNESS. I can stand a test on anything you want to ask me about it.

Mr. MacGUINEAS. Are you stationed in the yards?

The WITNESS. I am not stationed in that location, no, sir, not anymore than I am stationed at any other point on the Belt Line.

Mr. MacGUINEAS. I object to further testimony by this witness as to what the government actually does in those yards since it does not appear he has personal knowledge of it.

Exam. Disque. Do you have personal knowledge?

The WITNESS. I stand by the statement I made as to what they use the yard for.

Exam. Disque. How do you know that?

The WITNESS. I have been down there on several occasions. I have contact with our crews that go in there and I have contact with the yard people at the Army Base and I know that that is what they use the yard for from conversations I have had with them.

Exam. Disque. Is it part of your business to know that?

The WITNESS. It is not exactly part of my business, no, sir, but from dealing with them, why, I understand  
198 that is what it is used for.

Mr. MacGUINEAS. The witness himself states very plainly it is not his official position to know it; secondly, it is hearsay because he gets it by conversation with other people.

Exam. Disque. Do you think it is true what he is saying?

Mr. MacGUINEAS. I do not know. I will be glad to have a qualified witness establish the fact.

Mr. COUSINS. I am not going any further with that line. I do not think it is of any consequence.

Q. (By Mr. COUSINS). What is the nature of the tracks just west of the boulevard? You do not need to say what the government does with them, but describe them, as you would as a railroad man.

A. From what I know about them?

Q. Yes.

A. The tracks between the piers at Hampton Boulevard are known as Pier 1 coal yard for advance freight.

Mr. MacGUINEAS. Mr. Examiner, I object to testimony by this witness as to what is actually done on those tracks. He is not qualified on that subject.



Mr. Cousins. We will turn to a different subject and I will ask him only what his railroad does with respect to those tracks.

Q. (By Mr. Cousins). Mr. Burrows, when the Belt Line has a string of cars consigned to the Army Base, tell us how they are handled, how you make delivery, what you do with them?

A. We make what is known as a Qm classification. Qm is a designation that we use for the Army Base. We make that classification in Berkley Yard for roads connecting in the vicinity of Berkley and Port Norfolk, which is the Norfolk-Western, Norfolk-Southern, Seaboard Air Line, Atlantic Coast Line, and the Southern Railroad. The cars consigned to Qm or the Army Base are moved to Berkley and the Qm classification made. The trains are moved in either solid trains or solid cuts on Sewalls Point trains over the Virginian Railroad to Qm Junction, moved in via Qm to where it shows on the map as U. S. Army Base yards located between Hampton Boulevard and the Virginian.

Before leaving Berkley we get disposition of those trains from the yard office in the Army Base. They tell us what disposition to make of the trains and, as a rule, they are put on one of the three running tracks between the yard and the Virginian connection. Those running tracks are known as the new track, the new running track, and the old main line.

Q. Those are the tracks in the Army Base yard?

A. They are in the Army base yard and they are known as the running track between the Virginian Railroad and the entrance to their first yard. They have a yard on both sides of these main tracks. One side is known as the old yard, which is to the left going in, and the new yard to the right going in.

Q. I understand you to say that your railroad gets instructions from the Army Base yard office as to when to bring the cars in there and where to place them?

A. Where to leave them, yes, sir.

Q. Where is it that you are told to leave them?

A. Well, whatever track they want them left on. It may be the new track; it may be any one of the three running tracks, as I just named, or it could be on any of the tracks in either the old yard or new yard.

We have had to put the trains on as many as five tracks in either one of those yards. Those tracks will hold—I do

not think there is any of them that will hold over about 18 cars.

After they built this new track, which is the third track up here, why, the big majority of the time we will have them on one of those running tracks which they so designate.

Q. Who is it in this yard office that gives you your instructions?

A. In daylight?

Q. Not by name.

A. It is the lead man or his assistants. His assistants are known as yardmasters. I believe that is their title.

Q. Are they Army Base men or railroad men?

A. They are Army Base men.

Q. Now, after you have run your train into the  
201 Army Base yard, what happens from that point on?

A. In respect to the crew or the cars?

Q. Both.

A. Well, the crew is brought out of there light, back to Berkley, or wherever we might want to send them.

Q. That is all that crew does?

A. Well, he drops them off there.

Q. Then what happens?

A. The cars then are disposed of by the Army people, under Army supervision.

Q. Is the Belt Line not instructed to bring cars through from your Berkley yard for delivery direct to Piers 1 and  
2?

A. No. We have not had any instructions to deliver cars direct to the piers from Berkley Yard.

Q. The cars are placed on the piers at some time subsequent to the time when your engine leaves them in the yard?

A. That is right. We are talking about through Qm Junction now?

Q. Yes. We will take up the other in a moment. What power takes the cars from the yard down to the piers or warehouses?

A. We have two crews working in the Army Base. They vary from 7 to 9. These crews are worked in a pool and the work is assigned to them by the Army Base, under their supervision.

Q. Do you mean by that that the cars are not moved to the piers under any instructions from you or your  
force?

202 A. That is correct.

Q. Wholly under the instructions of the Army Base employees?

A. That is correct. We stop at Qm and at Qm Junction, as far as the supervision goes, and the north gate from the other entrance to the Army Base.

Q. I think you wanted to go ahead and explain about the north gate entrance.

A. Do you want that explained now?

Q. Yes.

A. We have another connection with the Army Base known as the "north gate" which, according to this map, enters there where it says "Norfolk Portsmouth Belt Line Railroad."

Mr. MACGUINEAS. Where it crosses Hampton Boulevard; is that correct?

The WITNESS. Yes. The connection is right around to the west of there.

Mr. COUSINS. Yes. All right.

The WITNESS. We also put cars for the Army base in through that connection. We receive those cars from the C & O Railroad and some from the Pennsylvania.

The method of operation there is that our two crews that work in the Base are on duty at this Sewalls Point engine house, which is located right along that line where it says "Norfolk and Portsmouth Belt Line Railroad." They go on duty at 8:00 a. m. and 4:00 p. m. Those crews  
203 take what cars we have for the Army Base in with them when they go on duty. That is around between 8:00 and 8:30 a. m. They clean up what Qm cars we have in the Sewalls Point district, and then again between 4:00 and 5:00 p. m.

Cars that accumulate between those hours and after 5:00 p. m., we push them in through the north gate to a track known as the "chain gate." There are two tracks after you get in the north gate, two leads around towards the piers. We put our cars for Qm in that gate and the Army takes them over from there.

Q. Can you tell us where that track is on the map?

A. I believe it is this track here (indicating). You see, this is the end of Piers 1 and 2. Just after you clear the—you see the boundary mark is not on this thing here. It is just after you get in government property.

Q. It is the track west of the Boulevard, which is a track north of the warehouses shown on this map?

A. The leads to the warehouses and in that location lead on or take off from one of these tracks that parallels from the north gate going in. It leads to the warehouses and



connects up with one of the tracks. Then there is another track beside that which parallels it. They put their empty cars coming to the Base on this lead that connects up with the different warehouse. That is what they call the new track. We call it the new track. That is where all

204 the empties are put out. The crews in the base back the empties out there and we reach in there and get them, just a short distance. The track that parallels that is known as the chain gate track. That is the track that we put our loads on going into the Base, through the north gate.

Q. That is on Army Base property?

A. Yes, sir, from the gate.

Q. And the Army Base takes care of the cars from that point?

A. That is correct.

Q. Where is the bulk of your deliveries made, through the Qm Junction or through this north gate?

A. Through Qm Junction inbound. Of course, the outbound empties are all brought out via the north gate, but the inbound movement, the bulk is through Qm Junction, and all empties out via the north gate.

Q. Mr. Burrows, are you familiar with the number of cars that are delivered to the Army Base currently, say for the last six months? I mean in a general way, not specifically.

A. I am familiar with the—the exact figures, you may say, or approximate figures for the month of June.

Mr. MacGUINEAS. We do not wish to prevent him making a general statement but if we can, we would rather not have him give, say, 200 cars in the month of June. We do not want the statement to be that specific for security reasons.

205 Can he not indicate generally in hundreds or thousands of cars over six months or something like that?

Mr. COUSINS. I want to ask him about the month of June.

Q. (By Mr. COUSINS). You have made a check for the month of June?

A. Yes, I have checked for all the months.

Q. Do not answer my question until Mr. MacGuineas has a chance to interrupt if he wants to.

Mr. Burrows, during this past month of June, were the number of cars delivered to the Army Base in the hundreds or in the thousands?

A. It will be in the thousands.

Mr. MacGUINEAS. That is, June 1944.

Mr. COUSINS. June, 1944.

The WITNESS. Yes, sir.

Q. (By Mr. COUSINS). In the thousands of cars?

A. In the thousands.

Mr. COUSINS. Mr. Examiner, the witness is prepared to say how many thousands, if you desire a specific figure rather than leaving it in a somewhat vague manner.

Mr. MACGUINEAS. I think for security reasons it is better to be left this way.

Q. (By Mr. COUSINS). Mr. Burrows, would you say that a total of 28,000 tons of traffic in a period of 31 days was at all representative of the month's export business during the past half year or year?

Exam. DISQUE. State what kind of export business.

206 Mr. COUSINS. Over the Army Base.

Exam. DISQUE. In box cars, you mean?

Mr. COUSINS. I mean all export traffic that moved over the Army Base.

The WITNESS. What was the total?

Q. (By Mr. COUSINS). 28,000 tons in a period of 31 days.

A. Over that? Would it be over that?

Q. Would you call such traffic as that representative at all of a month's business on that pier?

A. It would be much over that I would say.

Q. If you took 28 tons as an average load, that would give you a thousand cars, would it not?

A. That is right.

Q. Would your average load be as low as 28 tons?

A. I would say that the average tons per car would run better than 28.

Q. How much more?

Q. I would say they would run—35 tons would be my guess.

Mr. COUSINS. That is all.

Cross Examination.

Q. (By Mr. MACGUINEAS). Mr. Burrows, how long have you been connected with the Belt Line?

A. January 15, 1942.

Q. Where were you before that time?

207 A. Thirty-three years with the Pennsylvania Railroad at Philadelphia.

Q. So you know nothing about the actual operations at the Army Base prior to 1942 of your own knowledge?

A. No, sir.

Q. But you do know the operations as they were conducted between January and June of 1942, is that so?

A. Well, not too familiar with the operations between January and June for several reasons. I can give you them if you want them.

Q. Did you have a different job with the Belt Line?

A. I did not have a different job with the Belt Line, but in January—I came down here in January, 1942, a new man on the property with the exception of two months investigating conditions on the Belt Line during August and September of 1941.

Q. Pardon me. You say you were here in August and September, 1941?

A. On special duty.

Q. Investigating conditions?

A. Yes, sir.

Q. Actual operating conditions. Did that include operating conditions at the Army Base?

A. No.

Q. You did not see those at that time?

A. No; just a general check up. That is what it was. As you know, the war had just got under way and the conditions on the Belt Line were very crowded. I did not have too much time to analyze the work being performed in the Army Base territory as those crews worked in there. The work was assigned by the people in charge of that territory the same as it is now.

In other words, our crews went in there and they worked under the supervision of the people at the Base and it did not take a whole lot of checking.

Q. At that time who was operating the Army Base, when you first came down here in January, 1942?

A. The Transport Trading Company.

Q. Transport Trading and Terminal?

A. Yes, sir.

Q. And the Army then owned all of this area which you described as they now own?

A. I do not know.

Q. How do you know they own it now?

A. Only from hearsay. I have never seen anything on paper.

Q. You really do not know now who owns all of that trackage that you spoke about?

A. Only from hearsay.

Mr. COUSINS. I do not think I really asked about ownership. When I said Army Base property I just meant under



whose control it was. I did not intend to ask him anything about that.

Mr. MACGUINEAS. He said it was Army tracks.

209 The WITNESS. That is right. It is Army tracks.

Q. (By Mr. MACGUINEAS). The tracks were the same in the first half of 1942 as they are today, were they not?

A. No, sir.

Q. Substantially. You had your assembling tracks back of the warehouses, did you not?

A. On the west side of Hampton Boulevard, I will say that they were, with maybe some minor changes; but on the east side of the Boulevard there has been a lot of new work up in there.

Q. In the first half of 1942 there were some interchange tracks to the east of Hampton Boulevard, were there not?

A. Yes, sir, the old yard.

Q. What is it?

A. Yes, the tracks in the old yard were there, but the physical connection at Qm was not. We were not operating through Qm then. Everything was going around north gate.

Q. You say you have a Belt Line engine in the Army Base on the Army Base tracks today?

A. Two.

Q. Two Belt Line engines?

A. Yes, sir.

Q. You run those two shifts?

A. 8:00 to 4:00 and 4:00 to midnight.

Q. With Belt Line crews?

A. That is right.

210 Q. And the Belt Line assumes the full expense of those engines and crews, is that correct?

A. That is right.

Q. You also had those in there in the first half of 1942, did you not?

A. That is right.

Q. Those two Belt Line engines pick up cars which your main line engine drops off at the yard and carries those cars on to the Army Base pier tracks, does it not?

A. Yes, sir.

Q. And that was also done by the Belt Line in the first half of 1942, was it not?

A. Yes, sir.

Q. In the first half of 1942, did the Belt Line also assume the expense of the engines and the crews for those two engines in the yard?

A. Yes, sir, as far as I knew.

Q. With reference to the total tonnage which you move into the Base in any given month, there is a substantial fluctuation in the different months, is there not?

A. Well, it will not run true to form. It will fluctuate, yes, sir.

Q. In a six months' period, the high month might be twice as much as the low month, might it not?

A. Yes, sir.

211 Q. Do you think the high month might be three times as high as the low month?

A. Well, that all depends on the number of ships that they allocate to the piers. When there are no ships, why, they just do not move the cars in. That is, they take the cars in until it hurts, then they hold them out.

Q. So you think there might be a low month in 1944 when there were relatively few ships to load so that the tonnage that you pulled into the base would be only one-third of what you might have pulled in in your highest month?

A. Could be, yes, sir.

Mr. MacGUINNESS. That is all.

#### Re-direct Examination.

Q. (By Mr. Cousins). When you said that you had two engine crews operating on the Base, did you mean at one time or during the 24-hour period?

A. I meant during the 24-hour period; one engine, two crews. In other words, we man an engine in there from 8:00 a. m. to midnight, one crew working 8:00 to 4:00. That engine comes out at 4:00 o'clock and is prepared for the crew coming on duty at 4:00 o'clock to work to midnight.

Q. Along with that you did state before that the Army Base does keep 7 to 9 crews working?

A. Yes, sir.

Q. How many locomotives do they have?

212 A. I do not know that I can give you that. I could give you my guess. I can do that, but I do not know actually.

Mr. COUSINS. That is all.

(Witness excused.)

E. A. HODKINSON, was sworn and testified as follows:

#### Direct Examination.

Q. (By Mr. Cousins). What is your occupation?

A. I am a member of the Auxiliary Committee of the Trunk Line Association.

Q. That is an association of railroads in Trunk Line Territory?

A. Yes, sir.

Q. Including many of the defendants in this case?

A. Yes, sir.

Q. What is the nature of your work with that organization?

A. Since my connection with the organization, dating back to January 15, 1928, I have been engaged exclusively almost in connection with Interstate Commerce Commission work.

Q. You mean by that you are familiar with rates and tariffs and that sort of thing?

A. Yes. I have had over 30 years of experience along those lines.

Q. Mr. Hodgkinson, will you please explain briefly the manner in which the port rates to and from North Atlantic ports have been made, indicating the extent to which the level of the rates has been influenced by the so-called port practices such as loading and unloading cars?

A. More than 50 years ago the railroads found that it was not practicable to permit the public to come on the railroad pier to load and unload cars and that it was essential for the railroads to exercise control over water-borne freight handled from railroad piers to the end that the work involved might be performed without shippers' interference and for the railroads' convenience.

Consequently, at the various North Atlantic ports from Portland, Maine, to Norfolk, Virginia, the railroads undertake within certain defined limits to load from pier to car or unload from car to pier, water-borne freight which is also accorded the rail movement.

The practice is definitely limited by tariff provisions, which will be referred to later in my testimony, but in the main, this practice is a privilege restricted to railroad piers, and it originated in connection with the operation of railroad piers.

The omission of a specific charge for this service goes so far back in history that a complete explanation can not be made. However, we do know that it resulted partly from competition with the railroads' earliest competitor—the Boat Lines, which necessarily handled freight between vessel and pier, where it became available to the consignees to cart away by their own vehicles.



214 Thus it came about that the freight rates to and from the ports, included the loading and unloading of water-borne freight to the extent of the tariff limitations, but nevertheless, the level of the port rates has never been fixed with this practice in mind. In other words, the reasonableness of the port rates--by which I mean the rates applicable to export, import, intercoastal and coastwise traffic--does not depend upon the existence of the free-loading privilege. This conclusion is supported by various reasons:

Prior to 1932, under the old Port Differential Adjustment, which is well known, port rates were based upon the rates to and from New York, that is to say, the rates to and from New York were basic rates and rates from Central Territory to Philadelphia and Baltimore were uniformly on all classes 2 and 3 cents, respectively, lower than to New York. Westbound the same differential applied, except that on first and second class they were 6 cents at Philadelphia and 8 cents at Baltimore. The domestic rates, generally, were the same as the port rates.

Boston maintained competition with New York by the establishment generally of the same rates and the Hampton Roads Lines granted Norfolk the Baltimore basis or lower. This adjustment had been maintained for a long time without regard to different practices at the several ports with respect to certain privileges accorded water-borne

215 Freight, such as storage, wharfage and handling. Some of these privileges were accorded at some ports and not at others and to the extent accorded, the privileges differed at the different ports. This was brought about partly from the fact that these privileges are local in character and are published in the port tariffs of the railroads serving the port, but they are neither published nor participated in by other railroads that participate in the transportation. For example, the free loading service at Norfolk, which is involved in this proceeding, is a privilege published only in the tariffs issued by the Norfolk Lines and any expense incurred is not participated in by the line-haul connections of the carriers serving Norfolk.

At New York the principal port privilege is free lighterage, but if free lighterage was abolished and a special charge provided for that service, it is not thinkable that the New York port rates would be correspondingly reduced. Such a reduction would result in rates to New York lower than to any other North Atlantic port and would upset the

entire port relationship. This illustrates the point that although the basic New York port rates include lighterage, nevertheless, the level of the rates did not reflect the additional service performed in that port.

Another illustration is found in the absorption of wharfage at Norfolk. No similar payment to pier operators has been made at New York, Philadelphia, and Baltimore. This difference in practice has had no effect upon the rate level.

I have just dealt with the rate situation prior to 1932. In that year, as a result of the Eastern Class Rate case, Docket No. 15879, in which the Commission prescribed domestic rates on a distance basis, the long established port differential relationships were destroyed on domestic traffic. In order to preserve the differential relationships on import and export traffic, it became necessary to change the port rates because they were higher to a large extent than the domestic rates prescribed in the Eastern Class Rate case.

This change was made by using the prescribed Baltimore domestic rates as a standard. With some few exceptions the Baltimore port rates became the same as the domestic rates and as previously stated, the port differentials were applied to the Baltimore rates. Philadelphia went over Baltimore, New York 3 cents, and as in the past the Norfolk Lines maintained the Baltimore basis despite a sharp difference in the domestic rates. Just as the New York port rates which formed the basis for the old adjustment were made largely on the factor of distance, so the present Baltimore port rates which now provide the basis for the whole adjustment, are governed largely by the same mileage standard as the domestic rates.

Thus the level of the Baltimore port rates was not influenced by the local port practices at Baltimore and the port relationships are maintained as always without regard to the several ports.

Q. Can you give any other illustrations which support your conclusion that the rate level has not been influenced by the port privileges?

A. As already mentioned, there are numerous other considerations which indicate that the level of the rates does not depend upon the existence or non-existence of certain port practices.

I have already referred to free lighterage at New York and to the wharfage absorption at Norfolk, neither of which

had any effect upon the rates, and to the rates to Baltimore which are largely upon exactly the same level as the domestic rates in connection with which loading or unloading does not generally come into play.

In further connection with this phase of the question, a large portion of the traffic moving on port rates is in open top cars which are not loaded or unloaded by the railroads and yet are subject to the same port rates.

The tariffs exclude from the loading privilege certain commodities, such as heavy and bulky articles, and lumber, and yet it has never been suggested that line haul rates should be reduced on these commodities for that reason.

There is a considerable quantity of port traffic which moves over private piers or over other facilities where the port privileges do not apply.

218 During the greater part of the history of the Port of Newark no special privileges were accorded by the local railroads, but Newark has always had the same port rates as New York.

Another illustration that the port privileges have not been governed by the level of the rates is provided by the fact that the class rates between the port cities and a large part of Eastern Trunk Line territory applicable on export and import traffic are generally the same as applicable on domestic traffic between the same points.

I might refer to the rates from Scranton, Pennsylvania, Rome, New York, and to the territory generally east of Williamsport, Pennsylvania, Altoona, Pennsylvania, and Cumberland, Maryland.

Q. Now, I think you have prepared an exhibit dealing with the reasonableness of the Norfolk rates.

A. The Norfolk port rates as a result of the application of the Baltimore basis are depressed well below any standard of maximum reasonableness. The best test is comparison with domestic rates.

In my Exhibit 8, which consists of seven pages, I have shown the class rates, domestic, export, import, intercoastal and coastwise between 10 base points in Central Freight Association territory and the Ports of New York, Philadelphia, Baltimore, Albany, Norfolk and Boston.  
219 with the short mileage between each point.

This confirms my previous statement that Baltimore constitutes the basic rate under the present adjustment and that the Baltimore port rates are practically the same as the domestic rates.



Particular attention is directed to the summaries on page 7 of the Exhibit. In this summary, I have shown the average miles between the 100 base points and each port; the average domestic rates; the average import, intercoastal and coastwise rates; the average export intercoastal and coastwise rates and the percentages which the import rates and the export rates represent of the domestic rates as to the individual classes and also for the average of the six classes.

Norfolk, Virginia, has an average distance of 838.3 miles as contrasted with Baltimore 690.1; Philadelphia 745.7 and New York 804. It has a higher average domestic rate than any of these ports, but a lower average import and export rate. While at Baltimore the average of the six classes import rates represents 99.2 per cent of the domestic rates, and the average of the six classes of export rates represents 99.5 per cent of the domestic rates, the average of the six classes of import rates from Norfolk is only 90.5 per cent of the domestic rates and the average of the six classes export rates is only 90.9 per cent of the domestic rates.

My next Exhibit 9 is a statement showing examples of the class rates between representative points in Central Territory and the North Atlantic Ports in effect prior to the rates published in I.C.C. Docket 15879, Eastern Class Rate Case. These rates applied to all classes of traffic, domestic, export, and import.

As previously stated at this time, the New York rate was the basic rate and the rates to and from the other ports were differentially related thereto.

The relationships between the ports is a sensitive adjustment and has been under consideration by the Commission on numerous occasions.

For convenience, I have in my next Exhibit 10 given reference to the various cases in which the Interstate Commerce Commission has considered the differential relationship of the rates on export and import traffic to and from North Atlantic ports.

In my next Exhibit 11, consisting of 6 pages, for convenience I have reproduced Appendix B to I.C.C. report in I.C.C. Docket No. 13548, Maritime Association, Boston Chamber of Commerce, 95 I. C. C. 583. The last two paragraphs on Page 4 and the balance of the exhibit outlines the history of these differentials subsequent to the Boston case and brings the history up to date.

Q. Have you an exhibit which shows in a general way the rules governing the application of export, import,

221 intercoastal, and coastwise rates at the North Atlantic ports?

A. Yes. I have such an exhibit consisting of 2 pages, which is offered for identification as Exhibit No. 12. While the exhibit speaks for itself, I would like to draw attention to the provisions that the export rates are applicable, except as otherwise provided, only on traffic which does not leave the possession of the carriers and which is delivered by the carriers direct to the steamer or steamer's dock. Also to the provision that export rates will apply on shipments consigned on bills of lading for export handled through United States Navy Yards, Naval Bases, or Army Bases when proper evidence of exportation is given.

Q. Have you prepared an exhibit or series of exhibits which show the privileges accorded by the carriers at the several North Atlantic ports with respect to water-borne freight?

A. Yes, I have several exhibits covering the ports of Norfolk, Virginia, on the south, to Port Newark, New Jersey, on the north.

Before introducing these exhibits it should be stated that the official territory lines reach the terminals at Norfolk and Portsmouth over which water-borne traffic is transshipped to and from vessels through the facilities of the Norfolk & Portsmouth Belt Line.

The latter's tariff contains rules and regulations governing wharfage and handling and, as to the Official  
222 Territory Lines, the tariff, Agent Cunningham's I. C. C. 105, in Section 3, Item 910, on page 34 provides for a wharfage charge of 1 cent per hundred pounds and a handling charge of 3 cents per hundred pounds, except on specific articles not entirely pertinent here. The Trunk Lines in turn provide for the absorption of said wharfage and handling charges.

Exhibit No. 13, covering Norfolk, Virginia, shows Official Territory Lines shown in the heading thereof absorb wharfage charge not to exceed 1 cent per 100 pounds and handling charge not to exceed 3 cents per 100 pounds, as indicated in connection with the subject matter under the names of the various terminals listed in the exhibit.

Exceptions to the foregoing are shown in the three paragraphs in the lower right-hand corner of page 2 of the exhibit, one of them being that the absorption will not be made on freight in open cars, except on lumber.

The exhibit further shows that the absorptions are made only when the freight rate is not less than 10 cents per 100 pounds, or \$2.00 per ton.

Exhibit No. 14 covers Baltimore, Maryland, and, briefly stated, shows when the freight rate to or from Baltimore is not less than 10 cents per 100 pounds, or \$2.00 per ton, the freight rate will include loading from lighters to platform of piers under cover or unloading from cars to platform of piers under cover. Certain exceptions are shown in the exhibit, among which is that loading and unloading is not performed on traffic handled from and to open cars at open piers. The service of loading and unloading at Baltimore is performed only at railroad piers.

Exhibit No. 15, covering Philadelphia-Camden, is similar to the preceding exhibit and shows that traffic loaded in open cars will not be loaded or unloaded at carriers' expense at uncovered piers. At Camden the service is performed only at the Camden Marine Terminal operated by the City of Camden. At Philadelphia the service is performed at carriers' piers or at public piers operated by steamship companies, pier companies, City of Philadelphia, or by individuals excepting the piers controlled by the owners of the traffic.

Exhibit No. 16 relates to Wilmington, Delaware, where the service is performed only at the piers of the Wilmington Marine Terminal operated by the City of Wilmington.

Exhibit No. 17 relates to Chester, Pennsylvania, where the service is performed only on traffic handled over carriers' piers, or piers of the South Chester Terminal and Warehouse Company.

Exhibit No. 18 relates to Trenton, New Jersey, where the service is performed only at the piers of the Trenton Marine Terminal operated by the City of Trenton.

Exhibit No. 19 is W. S. Curlett's Tariff I. C. C. 733, which covers the service of the Port of Newark. It will be noted that the service is performed only on traffic handled through the piers, terminals, and bulkheads, both owned and operated by the City of Newark, New Jersey, and operated by the rail carriers. The service is not performed on numerous commodities as specifically shown in the rule, and that is on pages 6 and 7 of the tariff exhibit.

Exhibit No. 20 is a reproduction of the consolidated freight classification No. 16, Rule No. 27, which relates to loading and unloading of carload freight. This exhibit is self-explanatory.

Mr. Cousins. Cross examine.



MR. CHAFFEE. Before we get into cross examination, I do not know whether you so stated or not, but are you testifying on behalf of the Pocahontas Lines as well as the other trunk lines?

THE WITNESS. I am appearing here as Mr. Cousins' witness.

MR. COUSINS. Mr. Hodgkinson is not called on behalf of any other railroad.

MR. CHAFFEE. He is on the stand on behalf of certain carriers?

MR. COUSINS. He is called to the witness stand by me with reference to the Pennsylvania Railroad.

MR. CHAFFEE. Is he purporting to speak on behalf of the Pocahontas carriers?

EXAM. DISQUE. Anybody can use his testimony.

MR. COUSINS. He is not prepared to speak on behalf of the Pocahontas carriers or any other carriers.

MR. CHAFFEE. All right.

MR. COUSINS. He is called as my witness.

Q. (By Mr. CHAFFEE). On your Exhibit No. 13, did you there indicate that the Chesapeake and Ohio Railroad, which you show as one of the official territory railroads serving the Port of Norfolk, does not absorb the wharfage and handling charges on export and import traffic items on the several pages of that exhibit?

A. My understanding is that the Chesapeake and Ohio did not absorb any incidental charges incurred in connection with export or import traffic through the Port of Norfolk.

Q. When that carrier is the delivering carrier?

A. Yes, sir.

Q. So that as a practical matter the Chesapeake & Ohio should have been eliminated from your Exhibit No. 13?

A. If it does not show the exception on the part of the C & O, it should be eliminated.

MR. CHAFFEE. I can not find the exceptions in that exhibit.

MR. COUSINS. I think maybe it should.

THE WITNESS. Should be eliminated.

MR. COUSINS. From this exhibit.

MR. CHAFFEE. It is all right to name the Chesapeake & Ohio as an official territory carrier serving the Port of Norfolk as you do in the heading, provided there is some indication on the exhibit that these various absorptions named in the several items do not apply for account of that carrier.

The WITNESS. In the absence of the limitation as far as the C & O is concerned, I agree that the C & O should be eliminated from the heading of the exhibit.

Mr. CHAFFEE. That is all. Thank you.

Mr. MACGUINEAS. Are the carriers through cross examining their witness?

Exam. DISQUE. Yes. You may proceed.

Cross Examination.

Q. (By Mr. MACGUINEAS). Mr. Hodgkinson, you stated that in general these unloading privileges, as you term them, are accorded only at railroad piers. What do you mean by a railroad pier?

A. A pier operated under the direct supervision of the railroad or its accredited agent. I do not mean a pier that is operated by the owner of the traffic.

Q. Do you know who is operating the Canton Railroad pier at Baltimore?

A. I do not know.

Q. You do not know?

A. No.

Q. Would it surprise you to know that the Army is operating that pier right now?

A. I absolutely do not know anything about the situation at Canton.

Exam. DISQUE. You could not handle this traffic over your own piers at Norfolk. So what have you got to say about that?

The WITNESS. I beg your pardon?

Exam. DISQUE. You could not handle this traffic over your own accredited piers. There is a little too much of it.

The WITNESS. That is an operating matter I have not touched on, Mr. Examiner.

Q. (By Mr. MACGUINEAS). And furthermore, Mr. Hodgkinson, a considerable number of these tariffs specifically provide that they shall be applicable to traffic moving over Army Bases, do they not?

A. Not as far as the application of the export rates are concerned.

Exam. DISQUE. Is there an overcharge then? If the tariff says that the rates will apply to Army bases, why do you not apply the export rate to this Army Base?

The WITNESS. We have applied the export rate, Mr. Examiner.

Exam. DISQUE. I think Major Heimbaugh read a tariff yesterday which says that the rate shall apply to Army bases on export traffic.

Mr. COLEMAN. And I think be admitted at the time that those rates were being applied.

The WITNESS. Those are the rates we are applying, as far as I know.

Exam. DISQUE. But no allowance is made. All right.

228 Q. (By Mr. MacGUINEAS). Mr. HODKINSON, do your exhibits demonstrate that the cost of unloading at the piers at Baltimore over the Canton Railroad piers is included within the line haul rate?

A. Within the limitations laid down in the tariff, that is correct.

Q. And it is also true, is it not, that your line haul tariffs incorporate the terminal operations by the omnibus rule?

A. That is correct.

Q. So that in effect your line haul tariffs do hold out to shippers that if they export through the designated port referred to in the tariff they will receive shipside delivery when that is provided for in the terminal tariff, is that so?

A. Provided there is no interference with the railroad operations.

Q. Your tariff does not say that, does it? I am asking you what your tariff provides.

A. The tariff provides that no allowance will be made to the owners of the property specifically at some points.

Q. I am talking about what rates you hold out to the shipper.

A. The export rates to the shippers?

Q. Yes.

A. So long as he does not operate the pier.

Q. The tariff does not say that, does it?

229 A. It says, railroad operated piers. I read into the record the piers over which this allowance or this practice would be applicable.

Q. Your Norfolk tariffs do not say "railroad operated piers", do they?

Exam. DISQUE. You are talking now about the tariff which makes the allowance?

Mr. MacGUINEAS. Yes. The terminal tariff which is incorporated into your line haul tariffs.

Exam. DISQUE. Let us see how it reads.

The WITNESS. The tariffs specifically name the piers and those piers are operated by the railroads or their accredited agents.

Q. (By Mr. MacGUINEAS). All the tariff says is "Transport, Trading and Terminal Corporation, for example"



A. Yes.

Q. Or Imperial Tobacco Warehouse.

A. There is no longer any Transport Trading and Terminal Company operating a pier.

Q. I am asking you what the tariff says.

A. The tariff says that but as a practical matter they are not operating the pier.

Exam. Disque. You mean the tariff can not apply to something that is not in existence?

The WITNESS. Exactly.

Exam. Disque. Why have you not provided facilities for handling this great volume of traffic?

The WITNESS. You will have to ask an operating man that question, Mr. Examiner.

Q. (By Mr. MacGUINEAS). Mr. Hodgkinson, you do not know what actual services are being performed or in the alternative for which the railroads are making allowances to the Army on Army traffic at other ports, do you?

A. Not specifically. I understand at various ports the Army is operating piers which is not exactly the situation at Norfolk.

Q. You do not know what the actual situation is at those operations, do you?

A. Not of my own knowledge, but I have been advised that there are other piers that are operated by the Army in connection with which they do not get any allowance any more than they get at Norfolk.

Q. Have you also been advised there are piers operated by the Army where the Army is unloading the cars and is getting an allowance from the carriers?

A. I have heard rumors to that effect. I do not know how true they are.

Q. All your information about actual port operation is rumor, is it not, Mr. Hodgkinson?

Mr. Cousins. I object, Mr. Examiner. I put Mr. Hodgkinson on to testify solely to the tariffs and not with respect to practices. He will be followed by a witness who will have some greater familiarity with practices.

Mr. MacGUINEAS. Your witness has made some statements about what is going on at the other piers. I want to bring out that he does not know what is going on at the other piers. That is true, is it not, Mr. Hodgkinson?

The WITNESS. Yes.

Mr. Cousins. I am perfectly willing to have Mr. Hodgkinson's testimony on this restricted to the tariffs.

Q. (By Mr. MacGUINEAS). Do you know, Mr. Hodgkinson, whether the allowance for terminal services which is provided in the Norfolk tariffs is deducted before prorating?

A. I know positively that it is not, so far as the trunk line carriers are concerned.

Q. I did not get that.

A. It is not so far as the trunk line carriers are concerned.

Q. How do you know that? Do you actually know that yourself?

A. I am chairman of the division's committee for the Trunk Line Association and that is among my other duties. That expense is not prorated between the line haul carriers.

Q. You mean it never came to your attention?

A. It is not prorated between the line haul carriers.

Q. The usual practice is to deduct the terminal charges before prorating, is it not?

A. Certain terminal charges, but not these.

Q. What about the unloading charges covered by the Southern Railroad tariff?

A. I am not testifying as to those tariffs.

Q. You do not know anything about them?

A. No, sir. I am talking about the practice of the trunk line carriers.

Q. You do not know anything about what happens under the Southern tariffs, do you?

A. No, I do not. I know that the official lines do not participate in it. If the Southern Lines get anybody to prorate it, they do not get the Northern Lines to participate in it to any extent.

Q. Mr. Hodgkinson, your testimony speaks at some length about the maintenance of the port differentials by the rates?

A. Yes, sir.

Q. That port differential was maintained prior to 1942, was it not?

A. Prior to 1932.

Q. But not since?

A. Then there was a gap; then we restored the port relationships, using Baltimore as the basic rate as contrasted with New York prior thereto.

Q. That was done when?

A. That has been continuous since 1932.

Q. And that port relationship of the rates took into account the absorption of terminal charges at Norfolk, did it not?

A. No, sir. It took into account the export or the import rate to and from Norfolk with relation to the other North Atlantic ports.

Norfolk was placed on the same basis as Baltimore. The Baltimore rates did not comprehend any terminals at Baltimore.

Q. What was that last statement?

A. The Baltimore rates did not comprehend any terminals at Baltimore.

Q. I was asking you about Norfolk.

A. You have to go to Baltimore first, because Baltimore sets the pattern for Norfolk.

Q. You say the Norfolk rates were set in relation to the Baltimore rates; is that correct?

A. Yes, sir.

Q. In accordance with that your Norfolk rates were set at a certain level that included to the extent specified in your terminal tariffs the performance of shipside delivery, did they not?

A. They included this wharfage and handling performed under the limitations of the tariff.

Q. They included the absorption of that by the carrier?

A. Yes, sir.

Q. Well, now, today if the carriers make exactly 234 the same allowance to the Army that they made to the terminal operators here in Norfolk before 1942, that would not upset your differential, would it?

A. No; but it would open the door wide for similar treatment to the owners of property that likewise operate piers.

Q. But you agree it would not upset your differential?

A. It would not upset the differential, no.

Mr. MacGUINEAS. That is all.

Q. (By Mr. WENX). I have a few questions.

Mr. Hodgkinson, the complaint prays that as an alternative to the payment of an allowance to the complaint that the Commission reduce the import-export rates to and from Norfolk by the amount of the allowance sought for wharfage and handling.

If the rates applicable on import-export domestic water traffic were reduced by an amount to cover this terminal service, would that have any adverse effect upon rate differential adjustment to and from the North Atlantic ports?

A. I believe it would, very decidedly.

Q. Would it be possible to have the line haul rate to Norfolk reduced and have the other North Atlantic ports continue their higher adjustment on competitive traffic?



A. No, sir.

Q. In your Exhibit 8, page 7, you show the distances to Norfolk and to the other North Atlantic ports from representative points in Official Territory. You also  
235 show the average rate.

From that exhibit it appears that the distances to Norfolk from representative points in Official Territory are 838 miles as compared with 804 miles to New York.

A. Yes, sir.

Q. So that the distance to Norfolk is greater than the distance to New York?

A. From these 106 base points.

Q. From the base points?

A. Yes, sir.

Q. In spite of that greater distance to Norfolk, Norfolk actually enjoys today lower rates than New York, does it not?

A. Yes, sir.

Q. The comparison of rates and distances that we have just had between Norfolk and New York shows the same results when you use Baltimore and Philadelphia, is that not true?

A. As far as distance is concerned, Baltimore has a lower distance.

Q. So that in spite of distance, Norfolk now has more favorable rates than the other North Atlantic ports?

A. Distance considered, yes.

Q. Distance considered?

A. Yes, sir.

Q. If those present favorable rates to and from Norfolk were reduced, that advantage would be increased, would it not?

236 A. Oh, yes.

Q. (By Mr. MacGUINEAS). Along the line of your testimony which you have just given, if the line haul rates were reduced only by the allowance which is now provided in the tariff for unloading services at the terminals and that obligation of the carriers were eliminated, there would not be any decrease in the net overall cost to the shippers for exporting through Norfolk, would there?

A. You have to think of the whole picture at Baltimore. You have a separation—

Q. Answer the question.

A. I can not answer your question "yes" or "no". If Baltimore is going to have a separation of the line haul and the terminal charges, we would be faced with the same situation for the other ports.

As I mentioned about New York, we have terminal charges at New York that are somewhat in excess of the terminal charges at Norfolk. That would mean the line haul rates to New York would be reduced, and you would have the same propositions right on up the coast.

Q. Mr. Hodgkinson, let us confine ourselves to the cost to the shipper who is exporting through Norfolk.

Under the existing tariffs the shipper pays the line haul rate only and not shipside delivery, does he not, subject to exceptions?

237 A. Subject to exceptions, yes, sir.

Q. If you reduced your line haul tariff by the amount of those terminal allowances and imposed those upon the shipper separately, the overall cost to the shipper exporting through Norfolk would be just the same as it is now?

A. That is assuming the terminal expenses remained the same. They might go up or down.

Q. If they go up or down, no matter who performs them?

A. If they go down, then he is that much ahead again.

Q. Subject to the fluctuation in the cost of the performance of that service, the overall cost to the shipper through Norfolk is the same under either rate structure, is it not?

A. If the terminal expense remains the same, the overall cost would be the same, yes, sir. But it goes a little further. You can not stop this thing at the Port of Norfolk if you are talking about the separation of line haul and terminal charges. You have to go to Baltimore. The Baltimore rate applies to points inland. It is exactly the same as the domestic basis. If there is going to be separation of line haul and terminal rates, God knows where the adjustment would end.

Q. Mr. Hodgkinson, is it not true that basically your export rates were set with regard to the entire cost to the shipper of a movement to the foreign port; that is, with regard both to the rail and to the ship movement?

238 A. No, sir, that is not the case at all. After the port relationship had been destroyed by the Commission's prescription of class rate in Docket 15879, it became apparent that it was highly desirable not only from the railroads' but from the shippers' standpoint to restore the port relationships. Baltimore was selected as the representative point on which to build this new plan, principally because of its shorter mileage.

You will note on page 7 of my Exhibit-8 that Baltimore has the shortest average distance of any of the ports.

The only cases where Baltimore did not make the rates are places in Michigan where New York controlled the situation.

We considered Baltimore with exactly the same rates that applied on domestic traffic, and from that we built up New York and Philadelphia to maintain the port relationship in so far as Boston and Norfolk were concerned and Boston with regard to New York and Norfolk with regard to Baltimore.

Q. With respect to the inland rates to Norfolk, the controlling factor in their determination is to maintain the differential in terms of the inland rates to Baltimore, is that not true?

A. It is, with regard to the Baltimore situation. That is, to bring to substantial parity Norfolk with Baltimore.

Q. So that the exact mileage from an inland point is not the controlling factor in the setting of the rate to Norfolk?

A. I did not claim it was.

239 Q. I am asking you.

A. It was a controlling factor in determining the reasonableness of that particular rate.

Q. Within the limits of reasonableness, your rate is set with reference to maintaining the Baltimore differential?

A. The Baltimore relationship.

Q. Rather than the exact mileage or distance?

A. Yes, but in doing that the Port of Norfolk has had a greater reduction under the domestic rate than any other port, Baltimore being practically on the domestic basis.

Mr. MACGUINEAS. That is all.

Q. (By Mr. WINN). Mr. Hodgkinson, this differential adjustment of rates to the North Atlantic ports—is it a competitive adjustment which disregards the variations in service rendered at the different ports?

A. I would say that it is necessarily so.

Q. Its purpose is to create an overall competitive relationship rather than to reflect slight or even substantial variations in the operations at different ports?

A. That is correct.

Q. If we should separate the line haul and terminal factors, and the terminal factors should vary from port to port, how could you maintain stability in that differential adjustment?



A. I do not see how you could, and, furthermore, you would be faced with reductions in your domestic rates at points just short of the ports.

Q. You would have Fourth Section problems there?

A. Yes, sir.

Mr. WINN. At this point in the record Mr. Examiner, I wish to cite decision of the Commission in Wharfage Charges at Atlantic and Gulf Ports, 93 I. C. C. 157, I. C. C. 633, where the Commission investigated the question of separating the terminal and line haul factors at length, went into the advantages and disadvantages at great length, and concluded that they should not be separated.

That is all I have.

Mr. MACGUINEAS. I have one further question in connection with your answer to Mr. Winn.

Q. (By Mr. MACGUINEAS). As I understood you, you stated that a separation of the line haul export rate, breaking that down into just the rate plus a separate charge for your terminal services would affect your domestic rates.

I do not understand how that is so. You have different rates now for domestic and export traffic, do you not?

A. Not at Baltimore and not at New York, from quite a number of points.

Q. But you do at Norfolk?

A. Oh, yes.

Mr. MACGUINEAS. That is all.

(Witness excused.)

241 Mr. WINN. Mr. Examiner, the parties have kindly cooperated with me and have allowed me to put on my witness for the Port of New York Authority at this point. I do not believe he will take more than fifteen minutes.

I will call Mr. Laux.

EDWARD K. LAUX, was sworn and testified as follows:

Direct Examination.

Q. (By Mr. WINN). Please state your name and your capacity with The Port of New York Authority.

A. My name is Edward K. Laux. I am employed by The Port of New York Authority in the capacity of traffic manager. Our office is located at 111 Eighth Avenue, New York City.

Q. Outline your transportation experience.

A. For the past 33 years I have been engaged in traffic and transportation work, serving in various capacities such

as General Freight Agent, Freight Traffic Manager, General Traffic Manager for Coastwise Steamship Lines, and more recently as Traffic Manager, War Department Contractors, and American Newspaper Publishers Association, and have been in my present position since June 1st of this year.

Q. Are you familiar with the issue in this proceeding?

A. I have carefully perused the complaint and have a general understanding of the issues before the Commission in this proceeding.

242 Q. What is The Port of New York Authority?

A. The Port of New York Authority was created under a compact between the States of New York and New Jersey during the year of 1921 for the comprehensive development of the Port of New York, the future planning and protection of the port, and the better conduct of the commerce passing in and through the Port of New York; the increase and improvement of transport and terminal facilities therein and the more economical and expeditious handling of such commerce.

Q. What is the interest of the Port of New York Authority in this proceeding?

A. The Port Authority is authorized by statute to intervene in any proceeding affecting the commerce of the Port of New York, and the Port Authority has the duty of protecting New York in its competition with other ports, including Norfolk.

The Port of New York is in keen and substantial competition with the Port of Norfolk and with all other North Atlantic ports and Gulf ports in the handling of export, import, coastwise and intercoastal traffic.

The level of rail rates to and from New York and to and from the others ports are import factors in this competition. The advantages of one port in rates operates to divert to that port traffic which would normally move, and in the past has moved, through New York.

243 The present complaint asks, among other things, that the level of the line-haul rates on export, import, coastwise and intercoastal traffic to and from Norfolk be reduced, and the Port of New York has a vital interest in the issue whether Norfolk rates should be so reduced.

Q. Please state the position of the Port Authority in regard to the complaint.

A. The Port Authority takes no position with regard to the reparation award sought by the complainant. It likewise takes no position with respect to allegation that

the failure of the railroads to pay an allowance for wharfage and handling at the government-owned Army Base Piers 1 and 2 at Hampton Roads, Virginia, is in violation of the Interstate Commerce Act. However, we do oppose the alternative prayer of the complaint that rates be established covering separately wharfage and handling and that the line-haul rates to and from Norfolk be reduced by the amount of the separate terminal charges so established.

It is our fear that should rates be established on the basis sought, it will have a tendency to break down the application of uniform rates to and from port districts.

We feel certain that were rates constructed by deducting from the line-haul rates to and from Norfolk the rate in cents per 100 pounds for wharfage and handling, a calamitous situation would ensue and an anomalous basis of rates would crop up in application to and from the entire

244 North Atlantic range of ports.

The rate structures to and from the North Atlantic range of ports include all ports from Hampton Roads, Virginia to Portland, Maine and are on a definite port relationship. Competition for shipping off shore, coastwise, intercoastal, canal and lake from and to these ports has been keen for years and the present rate structures have played a very prominent part with regard to the commerce to and from the ports.

It is natural that any change in the line haul rates to and from Hampton Roads ports would spread to New York and to other North Atlantic ports. This situation could not, in our opinion, be avoided.

Consequently any proposed change in the rate levels to and from the Hampton Roads ports would force immediate action on our part to have a relative adjustment in the scale of rates that now apply to and from the Port of New York.

One of the primary advantages of the one-factor method of stating rates to and from the ports is the stability and fair relationship between the ports which can be maintained. Where terminal charges, such as wharfage and handling, are separately stated an element of instability is introduced, and flexibility of service destroyed, and the task of maintaining fair competitive rates as between the ports is made much more difficult or impossible. It is the total charge to or from shipside in which a shipper is interested. If  
245 terminal charges are to be separated out of the present one-factor rates, there will inevitably be



changes in these separately stated terminal charges from time to time, and each port will seek to gain a competitive advantage by reductions in these separate terminal charges. The port differential relationships which have generally been maintained for many years might well be destroyed if the important terminal charges are separately stated and subject to manipulation.

The subject of rates and differentials applicable to import and export and other water traffic, also their application to include full services to and from shipside, have been considered by the Commission since the early days and invariably no change in the present general practices were recommended.

It is quite obvious, in our opinion, that the rate structure in effect today includes the complete service and any attempt to break the rate structure down to separate any particular part of the service would be detrimental to the interests of the port and shippers there, the steamship lines and also the carriers.

Lighterage services and unloading of freight from and to railroad cars, also lighters, at and within New York lighterage limits has been performed under the provisions of the tariffs of railroad and coastwise lines and other types of carriers over a period of many years, almost a century.

Typical of the tariff arrangement is Trunk Line 246 Tariff Bureau I. C. C. A-788 issued by Agent W. S. Curlitt. Over all these years during which freight rates were revised tariffs of the carriers continued to hold out to the public these lighterage services, also loading and unloading as included in the rates. Hence it must be presumed that the freight rates were made to include the delivery to or receiving from steamships. In no sense is it a free service.

Mr. WINN. Cross examine.

Cross Examination.

Q. (By Mr. MacGUINEAS). As I understand it, Mr. Laux, you have no interest in this case at all except that you oppose a breakdown into a separate line haul charge and a separate terminal charge?

A. That is correct.

Mr. MacGUINEAS. No further questions.

Exam. Disque. That is all.

(Witness excused.)

Exam. Disque. We will recess until 4:15.

(At 12:00 noon, hearing adjourned until 1:15 p.m.)

## AFTERNOON SESSION 1:15 P. M.

Exam. DISQUE. The hearing will be resumed.

E. S. NEILSON, was sworn and testified as follows:

Direct Examination.

Q. (By Mr. Cousins). State your name and occupation.

247 A. E. S. Neilson, freight traffic manager, Pennsylvania Railroad.

Q. Mr. Neilson, you are freight traffic manager, Pennsylvania Railroad?

A. Yes, sir, Eastern Region.

Q. What is the nature of your duties?

A. General supervision over the making of rates on merchandise traffic and the procurement of traffic.

Q. Does that include the supervision of port practices?

A. Yes, sir.

Q. At such ports as Norfolk, Baltimore, and Philadelphia?

A. Yes, sir.

Q. Is it not a fact, Mr. Neilson, that for a number of years you have had a particular interest in these port matters on behalf of your railroad?

A. Yes, sir.

Q. And are well acquainted with the port practices?

A. Yes, sir. I was division freight agent at Baltimore and foreign freight agent of our railroad for four years before I came to my present duties.

Q. Will you please explain the historical background of the practice of loading and unloading freight at North Atlantic ports?

A. The loading and unloading of cars by railroads containing water-borne freight at seaboard piers at  
248 North Atlantic ports has existed for a good many years, and I believe prior to the time of any railroad officers now alive. This practice is believed to have originated at the outgrowth of competition with the Coastwise Steamship Lines in the early days of the railroads, and also as an outgrowth of the lighterage service performed at various ports but on a larger scale at New York than the other ports. If the ship docks at a railroad pier, it is more economical to unload the car than to perform lighterage to alongside the ship.

It has always been the effort of the railroads serving the various North Atlantic ports to keep them related as

to cost of service through such ports on the long established port relationships. Sometimes the method of delivery made it difficult to maintain these relationships on a handling charge which varied according to the place and method of delivery, and I believe the loading and unloading by the railroad has been influenced considerably by this effort to maintain port relationships.

A practical reason for performing the service was that in most cases neither the shipper nor the receiver was present at the port to handle the transshipping arrangements. This is true especially in cases where through export or import bills of lading had been issued. The issuance of through export and import bills of lading is a practice of many years' standing, antedating by 249 many years the first World War. Further, it is desirable in order to prevent pilferage, and so forth, to confine the pier operations to as few people and organizations as possible. Also there are times, particularly on freight to be delivered to ships, when the railroad in order to release cars desires to unload on pier awaiting arrival of ship.

At the ports of south of New York where a much greater percentage of ships dock at railroad piers, the practice is for the vessels to handle between hold and pier, and the railroad between car and pier. However, where freight may be placed by ship's tackle in an open car or removed by ship's tackle from an open car, it is not the practice for the railroads to assume any part of the loading or unloading.

This, as a whole, has provided the most practicable and efficient method of handling water-borne freight.

Q. Has there been any restriction of the loading practice to railroad or other types of piers?

A. Yes. Originally the practice of free loading and unloading was accorded only at the railroad piers for the reasons already mentioned, and although the practice has been somewhat expanded at North Atlantic ports, it is still restricted in principle to railroad piers. By this I mean piers operated by the railroads or public piers designated by the railroads in their tariffs to supplement railroad facilities, where the latter are inadequate to handle 250 railroad freight interchanged with vessels. For example, at Baltimore, where the several railroads have adequate pier facilities, the practice is restricted to railroad piers, and the railroads do not load or unload



freight on other piers. At Wilmington, Delaware, and Camden, New Jersey, the railroads use only the municipal piers, and the practice is accorded only to freight moving over those facilities. At Philadelphia, where railroad facilities are inadequate, the tariff provisions are broader, including railroad, steamship, and other public piers, but the tariffs specifically exclude "piers controlled by the owners of the traffic."

Q. In a general way explain any qualifications or limitations contained in the tariffs in respect to the loading and unloading practice.

A. In providing for the loading and unloading of waterborne freight the port tariffs carry and have always carried certain limitations or restrictions.

For illustration:

(a) At piers where open cars can be placed alongside of ship the ship loads and unloads the car as the car is a convenient place to pick up or place the freight.

(b) Generally speaking bulk freight, heavy articles exceeding 3 tons in weight, and liquids moved in tank cars, are not accorded loading and unloading service. The shippers must make their own arrangements and the  
251 railroads assume no part of the expense.

(c) To be entitled to this privilege the freight must move in road haul service at a minimum rate of 10 cents per 100 pounds.

(d) The handling service is actually performed by the railroads, either through employees or agents, and not by the shipper in consideration of an allowance. At most of the North Atlantic Ports the tariffs contain merely the obligation to provide the service, and say nothing about cost or compensation as this is unnecessary when the railroad either performs with its own employees or contracts with some stevedoring organization to do it. The tariff situation at Norfolk has followed a somewhat different course as the practice resulted from the absorption of the charges of the Norfolk & Portsmouth Belt Line Railroad, and somewhat similar language crept into the tariffs when the practice was extended to other piers served by the individual lines. Nevertheless, the payments made to public pier operators at Norfolk are not allowances and should not be so characterized. It is the amount of compensation paid by the railroad to the pier operator acting as its agent, and reference to the absorption of 60 cents per ton for loading or unloading is necessary only to restrict the cost.

(e) As already mentioned, the privilege is restricted to certain piers which the railroads have designated as adequate to meet their needs and is not accorded on piers of the owners of the freight. Incidentally, when the owner moves his freight through his own facility it is usually to get some service the railroad or Public Pier does not perform or to secure storage at less than railroad charges.

At Baltimore, where the railroad piers accommodate by far the greatest part of the water-borne freight, the practice is confined largely to railroad piers, and the Interstate Commerce Commission in the McCormick Warehouse Case, 148 I. C. C. 299, declined to permit the extension of this loading and unloading to the piers of the Terminal Warehouse Company. At Philadelphia, as previously stated, the tariff specifically excludes "Piers controlled by the owners of the traffic."

As a matter of principle the railroads have excluded from this privilege freight passing through space leased to shippers or receivers on the piers at Baltimore, Philadelphia, and Municipal piers at Camden, New Jersey, and Wilmington, Delaware.

Q. Please state when the loading privilege was established at Norfolk and explain its origin.

A. I have no records showing that the enormous volume of business passing through the Army Base at Norfolk in World War I was handled differently than now, that is, the Government assumed the cost of unloading or loading the freight cars. While I had no hand in it, my belief from a review of records is that the practice of paying 1 cent per 100 pounds wharfage and 3 cents per 100 pounds for loading or unloading had its inception in efforts to develop or retain post war traffic. The origin of the 3 cents per 100 pounds handling charge, so far as I can find, first appeared in a tariff issued by A. R. King, Port Director, Port Commission of Norfolk, Virginia, namely, A. R. King's, I. C. C. No. 1, effective November 1, 1920. This tariff was headed "City of Norfolk, Virginia" in large type and in parenthesis "Port Commission of Norfolk, Virginia" in large type and in parenthesis "Port Commission of Norfolk, Virginia", below which the words "Municipal Terminals" appeared, and applied to export and outbound coastwise, and import and inbound coastwise freight. Various other charges were shown along with the 3 cent per 100 pounds loading and unloading of freight

cars on piers. These charges subsequently appeared in the Norfolk & Portsmouth Belt Line Railroad Tariff I. C. C. 57, effective April 2, 1921, and the New York, Philadelphia & Norfolk Railroad Tariff I. C. C. 3328, effective April 15, 1921, provided that on export and import freight to or from points beyond Buffalo, Pittsburgh, and other Trunk Line termini the freight rate would include 1 cent for wharfage and 3 cents per 100 pounds for handling, but would not apply on freight in open cars. From this it is my belief the method of assuming the cost of loading or unloading at the various terminals had its inception as indicated.

I am further under the impression this was done 254 for two reasons:

(1) To meet the competitive situation at Newport News, Virginia;

(2) To meet the situation at other North Atlantic Ports, thus making the Municipal Terminal, which apparently embraced also the Army Base, competitive for the post war commercial freight.

Q. Please explain further the development of extension of the practice at Norfolk.

A. In 1925 the Pennsylvania Railroad entered into a contract with the Norfolk Tidewater Terminal, then operating the Army Base as a public pier facility, whereby the Terminal acted as agent for the railroad in providing and operating a railroad facility.

The Pennsylvania Railroad had no pier facility of its own in Norfolk and it desired to provide a service which would be attractive to shippers and to secure an agent to solicit the movement of water-borne freight via the railroad. In lieu of the usual form of rental, the railroad undertook to pay the Terminal 20 cents per ton on railroad freight moving over the pier. This payment was termed compensation for wharfage. The railroad also employed the Terminal to load freight to and from cars, and the compensation fixed for this service was 60 cents per ton.

255 The arrangement with the Tidewater Terminal continued until July 1, 1940, when the Army Base was taken over by the Transport Trading and Terminal Corporation. The latter company, as a public pier operator, was then substituted in the Norfolk port tariff.

Q. Please explain why the railroads have declined to pay an allowance or perform the service, as the case may be, at the Army Base.

A. When the Army took over the Army Base in 1942 for its own purposes and undertook to handle Government



freight, the railroads did not extend the privilege to the Army on the theory that it is a private pier operator, like any private shipper who decides to operate his own pier for the advantages and convenience of his own business. The refusal of the railroads to pay an allowance on Government freight is consistent with their declination to pay allowances to any shippers at North Atlantic Ports. In the early negotiations with the railroads the Army officer in charge of the pier demanded only an allowance.

It was not until May 1, 1943, that the Government requested the Pennsylvania Railroad to perform the unloading of certain cars. This request was made by letter from General Kilpatrick to the General Freight Agent at Norfolk on the theory that a prerequisite to complaint to the Commission "appears to be the request from this port that the various carriers perform the services or make

256 an allowance in lieu." By letter of May 22, 1943, General Kilpatrick extended this request to all of the Norfolk lines, saying:

"It is requested that the carriers meet their legal obligation by performing unloading service, when line haul rates cover such service. Arrangements should be made by all the Norfolk lines individually or jointly, to unload such traffic consigned to Hampton Roads Port of Embarkation, Army Base, Norfolk, Virginia, as a permanent operation."

The railroads have declined to perform the service at the Army Base, or to employ the Army as their agent, for the reasons that have already been mentioned, to wit, that the handling of water-borne freight on private piers, or piers controlled by the owners of the traffic is not held out by the railroads at North Atlantic Ports generally.

Q. In your opinion, how would the principles you have explained be affected if the railroads should accede to the demands made by the operator of the Army Base?

A. The railroads are apprehensive that to accede to the Army's request would destroy the principle which has served to restrict this port practice to the purposes under which it arose, and to hold the practice within reasonable limits. The railroads have no desire to penalize the government and government freight has always had the advantage accorded the freight of other shippers, when handled over designated piers.

The absorption would be in effect at the Army  
257 Base today on government freight if the Army had

not taken over the facility to obtain the advantages of control over its own freight. There are numerous private piers at Norfolk and the other North Atlantic ports which might claim the loading or unloading privilege on the theory advanced in this complaint.

To illustrate the situation I have had prepared an exhibit listing a number of industries located at the various North Atlantic ports who have piers served by rail sidings where freight can and at times is handled to and from vessels docked thereat.

This exhibit, consisting of 5 pages, is now offered for identification as Exhibit No. 21.

On page 1 are enumerated industries in the Baltimore, Maryland, port terminal area using privately owned or privately operated facilities having both a railroad siding and a deepwater pier where carload freight may be interchanged between railroad cars and vessels.

The other pages show similar information at various points, including Philadelphia, Chester, and Marcus Hook, Pennsylvania, Gloucester, Carneys Point, and Paulsboro, New Jersey, Eddystone, Pennsylvania, and Newark, New Jersey. The number of such industries could be increased had similar information been prepared for Bayonne, Jersey City, and Kearney, New Jersey, and other localities contiguous to New York Harbor. List of such industries 258 in the Norfolk area is to be submitted by another witness.

Q. From a tariff standpoint, what is the obligation of the railroads to provide pier facilities?

Mr. MACGUINEAS. Mr. Examiner, I do not think it has appeared that this witness is qualified to state what the tariff obligations were. We thought he was familiar with operating practices. I do not know that he is an expert as to what the tariffs provide.

Exam. DISQUE. He publishes the tariffs.

Mr. MACGUINEAS. Has that appeared from his testimony?

The WITNESS. My name is on the tariffs that carry these provisions as far as the Pennsylvania Railroad is concerned.

Mr. MACGUINEAS. All right.

Q. (By Mr. COUSINS). Proceed.

A. The railroads have never held out in their tariffs at North Atlantic Ports to provide piers where vessels may dock. At some ports the railroads have piers and at other ports they have not. Piers are provided either by rail-

roads, steamship companies, municipalities, public terminals, or private concerns, in each instance to serve their own interests or the welfare of the port, as the case may be.

Generally speaking, tariffs are silent with respect to any undertaking to provide piers but the Norfolk and Portsmouth Belt Line Railroad, which serves the Army base, has a tariff provision disclaiming any such duty.

259 For illustration, paragraphs (b) and (c) of Item 865 of Norfolk & Portsmouth Belt Line Tariff I. C. C. 105, effective September 22, 1938, and currently in effect, provide as follows:

"(b) The carrier does not, under this Tariff, or as amended, \* \* \* as to property which has been transported, or is intended to be transported over its lines, the carrier does not obligate itself to provide wharfage, storage or handling beyond the reasonable capacity of its property and facilities. All services undertaken to be performed by the carrier under the Tariff, or as amended, are further subject to Federal, State and Municipal laws and regulations. This Tariff, or as amended, does not apply on articles of a highly inflammable or explosive nature, or articles of an uncertain value.

"(c) The carrier does not, under this Tariff, or as amended, hold itself out to be a public wharfinger nor does it guarantee berths for vessels; and vessels reporting for loading or discharge (when berthed) will be berthed at proper piers in their order or priority; the carrier assumes no liability for demurrage to vessels, and all stevedoring (loading or discharge) will be subject to rules or customs of the port of Norfolk."

The pertinency of the above tariff provisions to traffic handled by the railroads which have a proprietary  
260 interest in the Norfolk & Portsmouth Belt Line is apparent when considered in the light of the decision of the Commission in Docket No. 4611, where at 44 I. C. C. 460, it is stated:

"In view of these facts and of the exclusive control which the carriers exercise by virtue of their joint stockownership and equal representation on the Board of Directors, we are of opinion and find that the Belt Line is a part of the line of each of the owning carriers for terminal purposes."

The facts alluded to in the above quotation are lengthy and relate in part to the act of Legislature of Virginia under which the Belt Line was incorporated and the purposes for which it was constructed.



Q. Mr. Neilson, did you hear a witness for the Government testify that the Pennsylvania Railroad, among other railroads, had made certain payments to the Lincoln Tidewater Terminal with respect to freight handled over the United Nations Depot?

A. Yes, sir.

Q. At Norfolk?

A. I did.

Q. Are you familiar with what the Pennsylvania has done in that respect?

A. I am.

Q. Explain what it is.

A. The question of paying those wharfage and unloading or loading allowances was taken up with us by 261 the Norfolk Tidewater Terminal people—

Q. The Lincoln Tidewater.

A. The Lincoln Tidewater Terminal people, and after a number of discussions we finally concluded, based on information they gave us, to pay the bills if they would certify that they were not the consignee—that is, consigned to or by the government and not the property of the government but were handled in their capacity as a commercial public pier operator and as commercial freight.

Q. Has that company submitted any bills to you?

A. Yes, sir.

Q. For government freight?

A. Yes, they have.

Q. What have you done with respect to them?

A. We have sent them back and declined to pay them.

Q. Did you hear the witness refer to a check made by the Pennsylvania in the amount of something like \$93?

A. Yes, sir.

Q. Do you know anything about that?

A. I do not unless it was a payment made before we had these discussions with the Lincoln Tidewater Terminal people, or it might represent a payment for one of those bills which were passed on the basis of certificate. I do not know.

Q. If it was not on the basis of the certificate, it was a mistake?

262 A. Yes, sir.

Q. There have been no other payments of that nature on government freight?

A. No, sir.

Mr. COUSINS. Mr. Examiner, I would like to offer in evidence Exhibits 8 to 21, inclusive.

Exam. Disque. Received.

(Defendants' Exhibits 8 to 20, Witness Hodgkinson, received in evidence.)

(Defendants' Exhibit 21, witness Neilson, received in evidence.)

Mr. COUSINS. Anything else you want to say?

The WITNESS. No, sir.

Mr. COUSINS. Cross examine.

#### Cross Examination.

Q. (By Mr. MACGUINEAS). Mr. Neilson, it is not entirely true that in the North Atlantic ports the absorption by the carriers of terminal charges has been limited to services on railroad piers, is it?

A. Not on railroad piers, but I think I qualified that by saying on public piers at certain places.

Q. You think it has been limited to that entirely?

A. Yes, sir. That is my understanding of it.

Q. Are you aware, Mr. Neilson, that the Southern Railway tariff covering export traffic into Norfolk specifically provides for the absorption of wharfage and handling charges on traffic moving over the Imperial Tobacco Company's warehouse?

A. I am not testifying as to the Southern Railway tariffs. I am testifying as to the Pennsylvania Railroad tariffs or generally the trunk line situation. I am not familiar with what Southern Railroad tariffs contain.

Q. So that all of the testimony which you have given with respect to tariff provisions and practices only relate to the Pennsylvania or, at most, to the trunk lines?

A. That is correct.

Q. Mr. Neilson, are you aware that Pennsylvania Railroad tariff 1378-H, I. C. C. 2613, specifically provides for an absorption of wharfage and handling charges up to 60 cents a ton on export-import traffic over the Imperial Tobacco warehouses at Norfolk?

A. Yes, sir.

Q. That is a private facility, is it not?

A. It is.

Q. So that is an exception to your general statement?

A. That is a peculiar situation. Most of the tobacco of the Imperial Tobacco Company moves from the south, the Kentucky-Tennessee territory, where we do not participate to any appreciable extent, and I understand, further, it is the practice of that company not to present bills for freight in which they have ownership. An examination of

our records up to January 1, 1939, discloses one  
264 shipment handled there where we paid wharfage.  
The ~~shipment~~ was not consigned to them but to the  
Corn Products Refining Company.

Q. The tariff does not contain any limitation as to ownership of traffic, does it?

A. No, sir, it does not.

Mr. COUSINS. When you said "up to 1939" you meant from here back to 1939, did you not?

The WITNESS. I meant from this date back to 1939, yes, sir.

Q. (By Mr. MacGHEE). And the Norfolk tariffs do not contain the provisions contained in some of the other tariffs to which you refer, excluding the allowance in the case of traffic moving over piers controlled by owners of the traffic?

A. No. It specifically states the piers over which it shall be applied. We control the situation in that way.

Q. One of those piers which you specifically designate in the tariffs is the Lincoln Tidewater Terminals, is it not?

A. Yes, sir. That is in the tariff.

Q. If that is so, what is your tariff authority for refusing to make the allowance to Lincoln Tidewater Terminals on Army freight passing over that pier?

A. Well, we have taken the position that we make the allowance to them as a public pier operator, and when they do not function in the capacity of a public pier operator, we do not make the allowance to them.

265 Q. Do you yourself actually know how they do function?

A. We understand that they do in some cases and in some cases they do not. They had permission, as I understand it, at one time to handle commercial freight. I do not think they have that permission at the present time.

Q. You do not actually know what permission they have from the Army, do you?

A. No. We have them certify. We require a certificate from them before we pay the bills, as I referred a moment ago, that the freight is not consigned to or by the government or in which the government has ownership.

Q. Again your tariff designation of the Lincoln Tidewater Terminal makes no qualification of that sort, does it?

A. No, sir.

Q. Mr. Neilson, I believe you testified that these payments which the carriers have been making to the various term-



inals for wharfage and handling—your language is: “are not allowances and should not be so characterized.”

A. Well, really, in effect, we employ these people to do the work for us. That is the thought I wish to convey there.

Q. You are aware, are you not, that the applicable tariffs specifically call these allowances?

A. In some cases they do, yes, sir.

Q. They do. But you think the tariffs are inaccurate in that respect?

266 A. No. I am getting at the purpose of the provision, that is, payment for services.

Q. If you made that allowance to the shipper for performing the service, it still would be a payment for the service?

A. Yes, but we call that an allowance when you allow that to the owner of the freight.

Q. But an allowance is a payment for services. You do not make an allowance except as a consideration for services rendered, do you?

A. There is a distinction there I think, in that this is service that we would perform if it went over our own piers and we have extended that practice to the public piers at that particular point.

Q. Well, the carriers in Norfolk at the present time do not have adequate facilities to handle the export traffic that passes through this port, do they?

A. They have not the facilities—I do not know about that, but I question whether they do have the facilities to handle all this enormous war movement, which is abnormal.

Q. It is export traffic passing through the port, is it not?

A. Yes, it is export traffic, but it is at an abnormal peak and ordinarily is not provided for.

Q. Well, of course, no one can say how many years that condition is going to continue; I suppose.

A. I can not, but I hope.

267 Q. The abnormality may become normal, conceivably?

A. I do not know. If we use the experience of War 1, it does not, sir.

Q. Mr. Neilson, you are not familiar with the actual operation of the Army Base Piers in the first World War, are you?

A. No, sir.

Q. You made the statement in your direct examination: "I have no records showing that the enormous volume of business passing through the Army Base at Norfolk in World War I was handled differently than now."

You do not know whether there was an enormous volume of business passing through the Army Base at that time?

A. Let me answer a little more specifically. The Pennsylvania Railroad had no piers in Norfolk through which it could handle export freight during the period of the last World War and, looking up our tariffs to find out the history of the Norfolk Tidewater Terminal arrangement and so on, I went back as far as I could, and I found no tariff which provided for it.

The first tariff I could find was the NYF & N tariffs to which I referred in my statement, which was in 1921; so I concluded from that that the railroads did not participate in the cost of loading and unloading at that time. That is the basis for my statement.

Q. You do not know what the volume of business was then, do you?

268 A. I do not, sir. I was in the Army.

Q. Do you know that the Army Base Piers were not actually operated during the first world war?

A. My understanding was that they were started by the city and completed by the Army.

Q. Do you know when they were completed for operation?

A. I do not know, no, sir.

Q. You do not know that was after the close of the war?

A. I am under the impression it was not, but I do not know.

Q. And, again, you do not actually know whether the carriers or the shippers assumed the actual loading and unloading costs for such traffic as did pass through this port during the first world war, do you?

A. No, no more than what I have stated there, which is an assumption on my part.

Q. You referred to the Municipal Terminal at Norfolk. Do you know of what physical property that constituted?

A. My reference to that Municipal property is qualified. I have always understood the municipal pier to be those piers adjacent to the grain elevator which, as I understand it, were built by the city after the government, I presume the Army, took over and completed what is now known as the Army Base. The city built those piers there in conjunction with the grain elevator.

269 It is my understanding the idea of the grain elevator was they wanted bottom cargo for the ships to draw ships to the port.

Q. In other words, the Municipal Terminal during the first world war was what is now Army Base Piers 1 and 2, is that not so?

A. It was Army Base Piers 1 and 2, and it also at one time embraced this pier that I referred to adjacent to the grain elevator, which is now, I think, United Nations Depot.

Q. United Nations Depot?

A. Yes, sir.

Q. Is it your understanding that the carriers on traffic moving through the other North Atlantic ports are not paying the government any allowance for the terminal handling of Army freight?

A. I know of no place where we are doing it, speaking for the Pennsylvania Railroad.

Q. You are speaking only for the Pennsylvania Railroad?

A. Yes, sir.

Q. You would not attempt to say whether other carriers at ports may be making such allowances, would you?

A. No. I might know about it, but I can not recall anywhere where the carriers pay.

Q. As I understand it, the only objection that you have expressed to the payment of the same allowance to the

270 Army which you formerly made to the terminal operators here is that you consider the Army to be in the same position as a private shipper and if you give that privilege to private shipper A, you would have to give it to every other private shipper, is that correct?

A. Yes, sir. We have had a policy that the custody of the freight was really the determining factor.

If the custody of the freight between rail and ship was that of the owner, the loading and unloading was not performed by the railroad.

If the ownership between the railroad and ship at certain ports was that of a public terminal, we have paid it.

Mr. Cousins. Excuse me. You said "if the ownership. I think you meant "custody."

The Witness. I meant custody, yes, sir.

Q. (By Mr. MacGuineas). If in this case the Commission should take the position that the government, because of the wartime exigencies, is not in the same position as a private shipper, the basis of your fears would fall down, would it not?



A. I think you would have a constant effort to get it. We have turned down people who were private pier operators.

Q. In other words, you have had petitions from private pier operators even before the government claimed the allowance?

A. Yes, sir.

Q. That is a continuing state in the—

271 A. We have that ever before us in our dealing with this question, and we have tried to pursue a consistent policy based on who has custody of the freight.

Exam. DISQUE. Why do you make that distinction?

The WITNESS. That seems to be the soundest way to get at it. That is the consistent way to get at it.

Exam. DISQUE. You go on the theory since you have provided pier—

The WITNESS. We provide a facility for the public generally on equal terms and when somebody handles it through his own facility the public is not in position to avail itself on equal terms.

Exam. DISQUE. He can get his freight loaded on the ship if he uses your pier. If he elects not to use your pier, that is his hard luck?

The WITNESS. Yes, sir.

Mr. WAGNER. May I ask, Mr. Examiner, in that connection, how that applies at Norfolk, for example, where the Pennsylvania does not maintain any facilities for the handling of export freight?

The WITNESS. We have arrangements with certain terminals here, certain public terminals. On the movement of traffic through the Lambert Point Dock, Inc., which is a public terminal with which we have an arrangement to day; I can not remember all the others, but we have five or six in our tariff.

272 Mr. WAGNER. You have no facilities of your own?

The WITNESS. No, I stated that in my earlier testimony.

Q. (By Mr. MACGUINEAS). You do not contend that the Lambert Point Dock is anywhere near adequate to handle the traffic moving through the port of Norfolk today, do you?

A. I do not contend it is possible to handle all of your Army freight through there, no, sir. I think it is adequate to take care of the commercial freight.

Exam. DISQUE. Is any government or Army freight moving over the private docks at Norfolk now, do you know?

The WITNESS. I can not answer that. I have not checked it.

Q. (By Mr. MACGUINEAS). Let me ask one or two further questions about these payments which you say the Pennsylvania has made.

A. Yes, sir.

Q. On traffic handled over Lincoln Tidewater Terminal.

A. Yes, sir.

Q. You, yourself, do not have personal knowledge as to whether that was commercial traffic or whether that was Army traffic, do you?

A. I did not look at it, but I looked at some of the way bills and I remembered that some of it was mahogany logs moving to a commercial consignee, and some of it was corkwood moving to the Armstrong Cork Company.

Q. You are not prepared to say that every payment which the Pennsylvania has made for traffic moving over Lincoln Tidewater Terminals has been restricted solely to commercial traffic?

A. Our directions to the people who pass the bills for payment are that they must have that certificate to which I referred, and, furthermore, our people who prepare the bills and submit them to the auditor were directed to check the way bills to see about the consignee of the freight and determine that it was commercial freight.

Q. You do not know what the other carriers are doing in that respect, do you?

A. I do not know.

Mr. MACGUINEAS. That is all.

(Witness excused.)

CHARLES R. SEAL, was sworn and testified as follows:

#### Direct Examination.

The WITNESS. My name is Charles R. Seal. I am traffic director of the Baltimore Association of Commerce, address 22 Light Street, Baltimore, Maryland, an intervener in this proceeding.

Our intervention and interest are confined to the alternative prayer of the complaint which seeks a separation of the line haul rates from the charges for handling. As I understand that part of the prayer, it is not for the future limited to Piers 1 and 2, but applies to the entire Port of Norfolk, nor as I read the complaint, is it limited to government traffic so far as the future is concerned.

We appear in opposition to the principle of separate handling charges. The rates at North Atlantic ports have applied to shipside as far back, I suppose, as anybody's memory goes and beyond that. We regard that as a logical way of applying the rate and feel that any separation would disrupt not only the rates and practices as they apply at Norfolk but would by force of competition extend to other North Atlantic ports, including Baltimore.

If such a separation is made we are fearful that the handling charges would be superimposed upon the present line haul rates. If that happens Baltimore and other North Atlantic ports would be placed at a competitive disadvantage with New Orleans and other southern ports, as well as Montreal and other Canadian ports with which the North Atlantic ports are in keen competition under normal conditions.

The rates from interior competitive territory points, such as Chicago, Cincinnati, and so forth, to New Orleans are now lower than those to Baltimore by amounts ranging from 15 cents first class to 3 cents sixth class and, generally, 3 cents in connection with commodity rates.

The addition to our rates of a handling charge would place upon us a further handicap in our competition with New Orleans and would have the same effect on our  
275 competition with Montreal.

The present Montreal rates are the same as the Baltimore rates on import traffic and the same as the Philadelphia rates on export traffic.

I can testify from my more than 16 years' experience at Baltimore that our competition with Montreal is very keen. The same is true as to New Orleans, particularly from the territory beyond Chicago—Indianapolis—Cincinnati line and west. In fact, in the past in normal times we have had great difficulty in drawing traffic from Chicago, Cincinnati, Indianapolis, and west in competition with New Orleans.

I mention that to show some of the dangerous possibilities of the alternative relief sought in this complaint.

I have an exhibit that I want to offer which shows the New Orleans rates in comparison with those to the Atlantic ports from Chicago and Cincinnati.

In support of my testimony with reference to the relationship between North Atlantic ports and New Orleans, I wish to identify an exhibit entitled: "Export and Import Rates Between Chicago-Cincinnati and North Atlantic Ports-New Orleans."



This shows first the fifth class export and import rates and the distance between Chicago and Cincinnati and the North Atlantic ports and New Orleans.

I offer that in evidence, Mr. Examiner. From it you will see that the rates to New Orleans are substantially lower in the reverse direction than those to and from Baltimore.

(Intervener's Exhibit 22, Witness Seal, received in evidence.)

#### Cross Examination.

Q. (By Mr. MACGUINEAS). You understand, do you, that the alternative prayer in our complaint requests a reduction in the line haul rates to Norfolk to be accompanied with a corresponding tariff setting up a charge for the handling, so that the overall rate would remain the same as it is now?

A. Well, that would not necessarily be the outcome if the Commission saw fit to find in your favor, because the Norfolk rate, like some of the other port rates, is water-depressed and most likely any handling charge would be superimposed on the existing rate.

We are very fearful that is what would actually happen.

Q. But that is not what we are asking.

A. I understand that, but that is something you may not be able to control if the Commission makes that sort of a finding.

Mr. MACGUINEAS. That is all.

Q. (By Mr. WAGNER). Did you hear the testimony of Mr. Laux this morning?

A. I did, and generally I concur in what he said.

Mr. WAGNER. That is all.

(Witness excused.)

277 W. W. WOLFORD, was sworn and testified as follows:

#### Direct Examination.

Q. (By Mr. REYNOLDS). Are you assistant freight traffic manager of the Seaboard Air Line Railway?

A. I am.

Q. What are your duties as such?

A. I am engaged in handling rate matters and litigation in connection with rate matters before the Interstate Commerce Commission and various State Commission.

Q. Have you made a study of the complaint now being heard?

A. I have.

Q. Have you prepared some exhibits bearing on the issues raised by that complaint?

A. Yes, sir.

Q. Please proceed in your own way to give your testimony and identify your exhibits.

A. First I wish to identify the map as Exhibit No. 23. This map is a map of the Norfolk and Portsmouth Belt Line in the Norfolk and Portsmouth area, and it includes various terminals and dock facilities that have been discussed in this case.

You will notice at the top part of the map there is a terminal facility that has been enclosed in dotted lines. That is the Army Base here under discussion. The dotted line is that portion of the Army Base that is west of Hampton Boulevard.

278 The tracks on the right hand side are also tracks belonging to the base, and I understand they are also under a separate fence. I have never seen the fence myself and I do not know what the boundaries are.

On the east side of Hampton Boulevard, outside of the dotted line is the area referred to by Witness Burrows as Qm Junction. That is the location of the track where Witness Burrows testified lots of cars destined for the Army Base were cut off—the engine was cut off and they were left there to be moved into the Army Base at the direction of the yard master of the Army Base by either the Belt Line engine or the Army engines, which were under his control.

Q. Under whose control?

A. Under control of the Army yard master.

Mr. MACGUINEAS. Is this witness testifying of his own knowledge or is he testifying about the other witnesses' testimony?

Mr. REYNOLDS. I am not repeating what the witness has said.

Mr. MACGUINEAS. He is not testifying of his own knowledge as to this, is he?

The WITNESS. I am just identifying the localities that the other witnesses talked about.

Q. (By Mr. REYNOLDS). Go ahead.

A. You will observe there I have shown half of the 279 Army Base with the word "Navy" on it and the other half with the word "Army" on it. I was out there in June myself and saw this center fence running through the Army Base and I was told—

Mr. MACGUINEAS. Of what year?

The WITNESS. This year, about a month ago. And I was told by the railroad's joint agent located in the yard that separated the Navy from the Army parts of the base and afterward in checking the analysis of the tonnage that moved into the base which I subsequently checked, I did notice there was considerable traffic destined to the Army base and to the Navy Supply Officer.

As the dotted line shows the fence as it is between Piers 1 and 2, I heard no testimony of any one who knows as to what the significance of that fence is or what it separates. I certainly do not know.

On the north side of the Base you will see that there is also another interchange track there designated as the chain gate interchange. That is also the second interchange that was mentioned by Witness Burrows in his testimony.

Q. (By Mr. REYNOLDS). What is your next exhibit?

A. My next exhibit is No. 24, which is Seaboard Air Line Railway Company Tariff I. C. C. A-8091. That is one of the tariffs that was referred to in the complaint.

I wish to call particular attention to Item 5 therein which states the rules and charges published herein are applicable only to line haul traffic when handled on export bill of lading or domestic bill of lading marked for export or coastwise or for Pacific Coast, provided that within 48 hours after arrival at the port the carrier's agent is notified by the shipper or consignee that such freight is intended for export, coastwise or Pacific Coast movement, and so forth.

The particular significance of that item, in so far as my present testimony is concerned, is that that does not anywhere provide for traffic coming in here to the Army Base marked for export that may go into storage at the Base, into one of those eight warehouses that are out there. Such traffic as that would not come within the terms of this tariff.

Item No. 20 under the caption of "Norfolk" is the next item I wish to refer to. Those are the terminals at the City of Norfolk that the Seaboard shows over which it handles commercial traffic and makes the allowance where the rate has shipside application to the operator of the dock for the unloading and wharfage charge.

Mr. MACGUINEAS. May I interrupt at this point?

Your tariff does not say anything about commercial traffic, does it?

The WITNESS. No, sir.

Mr. MACGUINEAS. That is an interpolation of yours, is it not?



The WITNESS. That is just a general statement of mine.

281 Q. (BY Mr. REYNOLDS). Proceed.

A. The next item I wish to call attention to is Item No. 70 which reads as follows:

"Freight moving under carload shipside rates is entitled to and will receive only one delivery or placement."

My particular purpose in calling attention to that is the controversy that has arisen over whether railroads should make a second movement of the car after it is turned loose by them and placed on one of these hold tracks at the direction of the Army base.

My interpretation of that item is it does not authorize that second handling of the car by a railroad.

Q. Does that conclude your comments on Exhibit 24?

A. Yes, sir.

My next exhibit will be No. 25, which is a reproduction of uniform or standard form of agreement entered into between the Seaboard Railway and such terminal operators as it may elect to authorize to perform the terminal services the railroad obligates itself to perform under rates given shipside application.

We have a standard form of contract that is used not only by the Seaboard Railroad but by the other Southern Territory lines serving Norfolk, and this is a copy of that standard form of contract. It is the same contract that we do have with other terminals here.

282 Q. Have you any comment you wish to make on that exhibit?

A. Yes. There is one spot I want to refer to when I can locate it.

Q. I will ask you to comment on the portion in Paragraph No. 3 on the first page.

A. Paragraph 3?

Q. Yes.

A. It will be seen that provision is in regard to absorbing the charges and that the provisions in regard to absorbing the charges shall not apply to traffic that is the property of the terminal. Under that provision we do not make any wharfage and handling allowance to even these terminal operators with whom we have the contract to act as public terminals for us. If they handle any of their own traffic they would not get any such allowance in that respect. The treatment that they are receiving is the same treatment that we are according to the Army Base in declining to allow it any wharfage and handling on its traffic.

It will be seen under Paragraph 16 on the second page of that exhibit the under-scored part shows where the carriers reserve the right to police and verify all such operations, meaning the operations of the terminal as they affect the handling of the property that the railroad turns over to them to handle. Under the present operation arrangement between the Army base and the railroads, the railroads have no opportunity to police and verify those operations.

Mr. MacQUINEAS: I move to strike that last answer. It does not appear this witness has any information as to present operations or what the Army would permit them to do. He is not entitled to state what opportunity the carriers would have to do the service if they wanted to do it. He has never asked anybody what they want to do.

Q. (By Mr. REYNOLDS). Do you know whether or not the carriers now have the opportunity to police and verify all such operations?

A. Yes. I know that we do not.

Q. At the present time?

A. Yes.

Q. Does that conclude your comment on Exhibit 25?

A. Yes. Exhibit No. 26 contains copies of O. D. T. General Order 16(a), General Permit O. D. T. 16(a)(1), and administrative order O. D. T. 17. Inasmuch as complainant's witness has testified that the so-called QMRWE Number denotes export traffic and that notice of the export character of the traffic is stamped on the freight bill, without regard to whether the bill of lading itself states: "for export" or only contains the QMRWE number, it becomes necessary to go into the actual significance of that QMRWE number.

The first provision I wish to call attention to is contained on Sheet 2 of the exhibit, which is also Sheet 2 of General Order O. D. T. 16(a). It will be noted there that they define what is export freight and they also define what is overseas freight. The two terms are not synonymous.

Other provisions of this O. D. T. order supersede—to be specific Paragraph 502-202 on Sheet 4 of 16(a)—provides that no persons shall offer for transportation and no carrier shall accept for transportation any carload to the port area named, any carload of overseas freight to or within the port area named or for storage within such port area or for delivery to any ocean carrier at such port area, un-

less there is outstanding an effective O. D. T. unit permit authorizing the transportation of such shipment.

That is the QMRWE number as appeared on these shipping papers which is supposed to designate the export character of the traffic. It will be seen that the kind of traffic it really designates is overseas traffic; that is, traffic of any kind destined beyond the continental or territorial limits of the United States under the definition of overseas traffic heretofore mentioned. It not only includes anything coming within the definition of export traffic but it also includes any water-borne traffic passing over those piers that comes within the definition of overseas traffic. I have in mind such traffic there as might be loaded on a ship for consumption or to be expended without going to a foreign destination.

Mr. MACGUINEAS. Will you read the definition of overseas freight again and tell us how you could apply food that the crew eats to that.

The WITNESS. I am not thinking about the food 285 that the crew eats so much as I am thinking about traffic that the ship might leave here with and transfer to another ship as supplies for that other ship or for supplies of any sort. Ships like that are usually referred to as "tender ships" and they take traffic outside the continental area and distribute it as supplies to other ships. They are engaged in the transportation of supplies from shore to ship.

Q. (By Mr. REYNOLDS). Proceed.

A. Another provision I want to call particular attention to is the provision for storage within the port area, traffic intended for storage in the warehouses or outside storage of the Army Base would, as I understand it, have the permit on it. When that traffic goes into these warehouses it loses its identity as export traffic if it ever had any.

Q. Where is that provision?

A. That is the same provision, paragraph 502-202 I just read, and it reads as follows—

Mr. MACGUINEAS. Mr. Examiner, I wish to object to this sort of testimony by the witness. We have here official regulations promulgated by a government agency. Those regulations speak for themselves and I do not see that this witness is any better qualified than anybody else in the country to say what the government meant when it put out some official regulations. The regulations are the best evidence of what they mean.



Mr. REYNOLDS. I think it will be sufficient if you  
286 will call attention to the regulations which you think  
are significant here.

The WITNESS. I think that particular part is significant,  
in that if, as I interpret it at least—

Mr. MACGUINEAS. We do not want this witness to interpret it. He is not entitled to interpret it. He may say  
"Look at Paragraph so and so," but I do not think he is  
entitled to do more than that.

Exam. DISQUE. That is all Mr. Reynolds asked him to do.

Mr. MACGUINEAS. That is not what he is proposing to do.

The WITNESS. I call attention to the provision for storage  
within such port area. That is in that same paragraph.  
That is the last thing, I believe, I have to mention in that  
exhibit.

Exhibit No. 27 is a chronological history of the Army  
Base at Norfolk and it consists of five pages of history to  
which is attached copies of correspondence between the War  
Department, on the one hand, and the railroads serving the  
Army base, on the other hand, regarding the making of  
allowance to the Army base.

Q. (By Mr. REYNOLDS). Is the material in the exhibit  
material that you got from the files of the Seaboard Air  
Line Railway Company?

A. Yes, sir.

Exam. DISQUE. You mean the history?

The WITNESS. Yes, the history.

287 Q. (By Mr. MACGUINEAS). You got them from  
where?

A. The files of the Seaboard Air Line Railway.

Q. I should like to ask a few questions as to the qualification of the witness. Can you tell where in the files of the Seaboard Air Line Railway you will find a demonstration of the fact that the Army Supply Base was built by the Federal government during World War I?

A. I can not right at the moment, but I am satisfied I can in a few minutes.

Q. You saw that in the files of the Seaboard Air Line?

A. I must have.

Q. Did you see it? Did you prepare this exhibit?

A. I did not prepare it myself personally.

Q. Who prepared this exhibit?

A. It was prepared under my direction.

Q. You did not actually look at the documents in the Seaboard Air Line office?

A. No; I did not examine each document. I read this after it was prepared and looked at such as I wanted to look at.

Q. You refer in the first paragraph to a lease of the Army Supply Base to the City of Norfolk under an agreement of November 20, 1919.

A. Yes, sir.

Q. Did you get that lease from the files of the Seaboard?

288 A. I either had the lease or had a letter from one of the parties to the lease that gave that information.

Q. Did you see that yourself?

A. I do not recall.

Q. You do not know. Then, further, at the end of the first paragraph you refer to a new agreement between the City of Norfolk and the Secretary of War cancelling the former agreement dated April 20, 1919.

A. Yes, sir.

Q. You did not get that new agreement out of the files of the Seaboard, did you?

A. I certainly did.

Q. The actual agreement?

A. I do not know that the actual agreement was there, but either the actual agreement or a copy.

Mr. REYNOLDS. The witness is not undertaking to state the terms of any agreement. This purports to be nothing more than a brief history of the Army Base. He is not going into the terms of the different agreements.

Mr. MACGUINEAS. The history consists of a series of facts. If it is to be brought out, it should be brought out by witnesses who know the facts. I do not consider this proper evidence. This is given by a man who admittedly does not know the facts and he says he thinks he got it from some letters in the files of the Seaboard Railway.

289 The WITNESS. I am prepared to give you the exact source of every fact in here, if you want to take time to go into it.

Mr. MACGUINEAS. All right. I want you to do that.

The WITNESS. All right. I have as much time as you have.

Mr. MACGUINEAS. May we do that now?

Mr. REYNOLDS. No. That is cross examination.

Mr. MACGUINEAS. This is a part qualifying the witness and I am entitled to ask qualifying questions.

Mr. REYNOLDS. He has stated where he got the information. It is the usual information contained in the files.

The railroads have contacts with these different people who operated the piers and the files show these facts. He is not undertaking to go into the agreement.

Mr. MACGUINEAS. If there was such an agreement the way to prove it is to produce the agreement.

Mr. REYNOLDS. We are not offering to prove the contents of the agreement.

Mr. MACGUINEAS. If they existed a copy of them is proof of the existence.

Mr. REYNOLDS. We are not trying to prove that the agreement provided for this or so. All he said was that a new agreement was entered into between the City of Norfolk and the Secretary of War cancelling the former agreement dated November 20, 1919.

Mr. MACGUINEAS. He does not know whether such agreement was entered into.

Mr. COUSINS. His files indicate that.

290 Mr. REYNOLDS. Anybody can find it by going over to the City Hall and looking at it. There is nothing secret about them. We do not want to prove the contents of the agreement.

The WITNESS. Will you let me state the purpose I prepared it for? It was to show the relation between the railroad on the one hand and the various owners of this property over the period of years on the other hand, and those facts that are stated in there, whether they be facts or not, are what we have in our files and are the things that influenced us in our relations with those people.

Mr. MACGUINEAS. If this witness will qualify his testimony by saying that these are considerations which the Seaboard took into consideration but that he does not purport to testify as to whether they are true facts or not, I will withdraw my objection.

Q. (By Mr. REYNOLDS). Will you so qualify?

A. I certainly do, yes. That history has been gone over to a great extent already and I have no desire to comment on it.

Q. Suppose you take up your next exhibit.

A. The next exhibit is No. 28 and consists of four pages. It shows the arrangements between the Southern Territory lines and the public rail-water terminals in the Hampton Roads area and practices of the Southern Territory lines in regard to all private industries having waterfront terminals engaged in handling their own traffic. The purpose of this is also similar to the purpose of the others.

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I merely set forth here the relationship of the railroads to each of these public terminals, which goes over to and includes all of pages 1, 2, and 3, and the semi-public terminal. That is, it has a dual personality. I refer to the Imperial Tobacco Company. It has a public warehouse, and there are the private terminals composing the Naval operating base and the individual industries named at the bottom of page 4. That sets forth our relationship with each of those terminals and it shows that there is no inconsistency in the treatment accorded the Army Base and each of these terminals.

I have no further comment to make.

Q. Take up your next exhibit, No. 29.

A. Exhibit No. 29 consists of two pages and is an excerpt from Agent R. H. Hoke's Southern Export Tariff, I. C. C. 903. On the second page it reproduces item 160. I may say here this is the tariff carrying the line haul rate from interior destination into the port of Norfolk. Under this item 160 it will be observed it provides except as otherwise provided in this tariff rates published do not include handling or other charges.

Then item 155 also quoted on the first page and continued on page 2 provides under paragraph numbered 1, that the rates named in this tariff apply only, and one of the conditions is that the traffic does not leave the possession of the inland carrier until delivered to the ocean carrier or to its agents.

202 Paragraph No. 2 provides that the rates named in this tariff apply on traffic which leaves the possession of the inland carrier or its agent after arrival at the port, when provision for the application of the export rates under such circumstances is covered by a transit tariff on file with the Interstate Commerce Commission.

I have in mind traffic that goes into the possession of the consignee and is placed in a warehouse by him.

Mr. MACGUINNESS. Have you any comment on paragraph No. 4?

The WITNESS. That has nothing to do with the point I am about to make.

Mr. MACGUINNESS. Very well.

The WITNESS. Or that I just made.

Exam. DISQUE. Did not I hear yesterday read that this absorption at public piers does not apply on traffic from the south?

The WITNESS. We do have this wide open or blanket application of shipside rates but it is not true from the south

This matter is having attention and further advice will be given you at an early date.

Very truly yours,

/s/ E. R. OLIVER  
Vice-President

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EXHIBIT No. ....

WITNESS: .....

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SUBJECT: Army Base—Wharfage and Handling Charges.

NORFOLK & PORTSMOUTH BELT LINE RAILROAD COMPANY  
Norfolk, Virginia (10) December 8, 1943

H. L. WHITE, JR.,  
Vice-President and General Manager

J. R. Kilpatrick,  
Brigadier General, U. S. Army,  
Hampton Roads Port of Embarkation,  
Newport News, Virginia.

Dear General Kilpatrick:

This will acknowledge receipt of your letter of November 9, 1943, file APTAK 548.3-TD, in regard to wharfage and handling charges at Army Base Piers Nos. 1 and 2.

The Norfolk and Portsmouth Belt Line Railroad Company publishes the tariff No. 6-J covering wharfage, handling and storage charges on export and import traffic for the benefit of its eight proprietary companies, and I am confident that they will fully consider your request.

Yours very truly,

/s/ H. L. WHITE, JR.,  
Vice-President and General Manager.

cc—Mr. R. J. Doss, VP, ACL R. R., Wilmington, N. C.  
Mr. Geo. Duglinson, Jr., VP., N&W Rwy., Roanoke, Va.  
Mr. J. E. Dalton, VP., NS. Rwy., Norfolk, Va.  
Mr. W. S. Franklin, VP., Penna. R. R., Philadelphia, Pa.  
Mr. E. R. Oliver, VP., Southern Ry., Washington, D. C.  
Mr. T. E. McAndrews, VP., Virginian Rwy., Norfolk, Va.

EXHIBIT No. 3  
WITNESS: HEIMBAUGH  
PAGE No. ....

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INTERSTATE COMMERCE COMMISSION

Docket No. 29117

UNITED STATES OF AMERICA, PLAINTIFF

v.

ABERDEEN AND ROCKFISH RAILROAD CO., ET AL.,  
DEFENDANTS.

Statement

Showing the Export Application  
Via Norfolk, Va.,

Of Rates in Representative Tariffs  
Containing Class Rates and Commodity Rates  
Also

Representative Rates on Classes and on Commodities  
To Norfolk, Va.

In Effect 14 June 1942 and at Present  
From Various Origins.

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STATEMENT

SHOWING THE EXPORT, IMPORT, COASTWISE AND INTERCOASTAL APPLICATION  
VIA NORFOLK, VA.,  
OF RATES FROM AND TO TRUNK LINE ASSOCIATION TERRITORY STATIONS

PUBLISHED IN AGENT W. S. CURLETT'S TARIFF, I. C. C.  
No. A-694

(Trunk Line Tariff Bureau Freight Tariff 80-C)  
(Class Rates)

The application shown in this exhibit for this tariff is the same as in effect 14 June 1942.

Item 39-A

Import, Export, Intercoastal and Coastwise Rates versus Domestic Rates.

(a) The class rates published herein for application on import, export, intercoastal and coastwise traffic take precedence over other class rates between the same points via the same routes. From and to points shown on pages 7 to 32, incl., of tariff, as amended from and to which no import,

export, intercoastal and coastwise rates are specifically published herein, the class rates published on domestic traffic in other tariffs lawfully on file with the Interstate Commerce Commission from and to such points will apply on import, export, intercoastal and coastwise traffic and will be subject to rules and application of rates as published herein governing import, export, intercoastal and coastwise traffic.

(b). If the commodity rates, established in other tariffs lawfully on file with the Interstate Commerce Commission via the same routes for application on domestic traffic, produce a lower charge on any import, export, intercoastal or coastwise shipment than the rates contained in this tariff and as provided in paragraph (a), such commodity rates will apply.

### Item 55-B

#### Certificate on Import Freight (Note).

Each bill of lading and shipping order covering import freight received from steamer dock, customs bonded warehouse, Appraiser's stores, initial carrier's stores, public warehouses or fumigation plants after having been fumigated under Federal regulations and inspection, entitled to an import rate or the application of import rules, regulations and charges shall bear on its face a certificate in the following form which must be signed by the shipper or his Agent:

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#### IMPORT CERTIFICATE

..... hereby certify that the property covered  
(I) (We)  
by this receipt was imported in the .....  
..... from ..... (kind of vessel)  
and its name) ..... arriv-  
..... (name of foreign port)  
ing at this port on ..... and has not  
..... (Date of arrival)  
been in any private warehouse (not public warehouse)  
but is transferred to railroad station direct from

.....  
(Steamer dock)

.....  
(Customs bonded warehouse)

.....  
(Initial carrier's stores)

.....  
(Appraiser's stores)

.....  
(Public Warehouses)

or from fumigation plants after having been fumigated under Federal Regulations and inspection.

Shipper .....  
By Agent .....

Note.—In order to obtain the benefit of import rates or the application of import rules, regulations and charges, the certification referred to in this rule must be made at the time the shipment is tendered to the carrier.

*Item 100C*

Application of Import Rates. (For Exception, see Item Nos. 105 and 150 of Tariff)

Import rates named herein from stations shown on pages 5 and 6 of Tariff, as amended will apply on property received from foreign countries, viz.:

Canal Zone of Panama;

Cuba

Insular Possessions of the United States (Philippine Islands, Puerto Rico, Hawaiian Islands and Virgin Island), also

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All points of origin not located in:

United States of America (including Alaska);

Canada (including provinces of Prince Edward Island, New Brunswick and Nova Scotia);

Newfoundland;

Islands of Miquelon and St. Pierre

and delivered to the rail carrier direct from ship's side or dock of vessel bringing such property to origin stations or on such property received by the rail carriers from customs bonded warehouses, appraisers' stores (not internal revenue stores) or public warehouses at the port of entry (see Note A) or initial carriers' stores, or fumigation plants after having been fumigated under federal regulations and inspection, within twelve (12) months from date of entry, provided same has not been trans-shipped at any other United States port (see Note B).

The rate to be applied will be that in effect on the date property is received by the carrier for transportation, either direct to destination or to an intermediate point for transit tariffs lawfully on file with the Interstate Commerce Commission.



**NOTE A**—In order to obtain the benefit of import rates on traffic stored in public warehouses, the owner or his agent must register such traffic at the port of entry, except as otherwise provided herein, with the Trunk Line Freight Inspection Bureau within twenty-five (25) days of the date such traffic arrived at such port of entry and at the time of reshipment furnish the carrier with evidence showing origin of such traffic as provided in Item 55 of Tariff, as amended, as well as date traffic was entered at the port of entry.

It is understood the actual inspection service at Norfolk and Lambert Point, Va. is performed by the Southern Weighing and Inspection Bureau.

**NOTE B**—Trans-shipment, as herein mentioned, means the unloading of traffic at any port, and subsequent reshipment thereof to another port under a new bill of lading or contract of carriage, but does not mean traffic which is transferred from one vessel to another for on-carriage under the terms of the original bill of lading taken out at time of forwarding at the foreign port from which traffic cleared on the first vessel.

#### *Item 110-A*

Application of Export Rates. (For Exception, see Items Nos. 115 and 150 of Tariff)

Rate basis Numbers named in this Section will apply on property consigned for export to foreign countries, viz.:

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WITNESS: .....

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Canal Zone of Panama, Cuba, Insular Possessions of the United States: (Philippine Islands, Puerto Rico, Hawaiian Islands and Virgin Islands), also all destinations not located in: United States of America (including Alaska), Canada (including provinces of Prince Edward Island, New Brunswick and Nova Scotia), Newfoundland, Islands of Miquelon and St. Pierre

when exported direct from stations named on pages 5 and 6 of Tariff as amended, will only apply, except as otherwise provided herein on traffic which does not leave possession of the carrier delivered by the Atlantic Port Terminal Carriers direct to the steamer or steamers' dock upon arrival at the port or after storage or transit has been ac-

corded by the carriers under tariffs which permit the application of the export rates; and also on traffic delivered to the party entitled to receive it at the carrier's seaboard stations to which export rates apply which traffic is handled direct from carriers' stations to steamship docks and on which required proof of exportation is given.

Shipments not consigned in shipping orders or bills of lading for export, which are ordered for export after arrival at seaboard, or outer holding yard or yards, will be subject to the rates, rules and regulations applicable to export traffic or the same as would have applied had the shipment been originally consigned for export, so long as the property has not passed from the possession of the carrier and is subject to a reconsigning charge of \$2.97 per car.

Export rates will also apply on shipments consigned on bills of lading for export, destined to foreign countries or foreign possessions of the United States; handled through United States Navy Yards, Naval Bases or Army Bases or delivered to United States Government vessels docked thereat on presentation of proper evidence of exportation.

All shipments consigned to points covered herein for export are to be waybilled and bills of lading issued at the export rates named herein. Rate named herein to Baltimore, Md., on export property will apply on shipments delivered to vessels directly from railroad owned piers or piers leased to and operated by the Railroad Company at Baltimore, Md.

#### *Item 120*

*Application of Intercoastal Rates from North Atlantic Ports. (For exception, see Item Nos. 125 and 150)*

The Rate Basis Numbers named in this section apply on Intercoastal traffic originating at points on the Pacific Coast of the United States, Alaska and British Columbia also on traffic originating at interior Pacific Coast points moving via Pacific Coast ports, and moving via the Panama Canal, when arriving at origin stations named on pages 5 and 6 via vessel and delivered to the rail carrier direct from shipside or dock of vessel bringing such property to origin stations named on pages 5 and 6, provided same has not been trans-shipped at any other United States port (Note).

NOTE—Trans-shipment as herein mentioned means the unloading of traffic at any port and subsequent reshipment thereof to another port under a new bill of lading or contract of carriage.

The rate to be applied will be that in effect on the date the property is received by the carrier.

#### Item 130

Application on Interoceanic Rates to North Atlantic Ports.

(For exception, see Item No. 150)

The Rate Basis Numbers named in this Section will only apply on traffic destined to points on the Pacific Coast of the United States, Alaska and British Columbia also on traffic destined to interior Pacific Coast points moving via Pacific Coast ports and moving via the Panama Canal, which is delivered by the Atlantic Port Carriers to the steamer or steamers direct upon arrival at the port or if storage or transit has been accorded by the port carrier at the port under tariffs which permit the application of the Interoceanic rates, and also on traffic delivered to the party entitled to receive it at the carriers' seaboard stations to which interoceanic rates apply, which traffic is handled direct from carriers' stations to steamship docks and on which required proof of trans-shipment is given.

Shipments not consigned in shipping orders or bills of lading to a point on the Pacific Coast of the United States, Alaska or British Columbia for movement via Panama Canal, which are ordered to such destinations after arrival at the seaboard or outer yard or yards, will be subject to the rates, rules and regulations that would have applied had the shipment been originally consigned for such destination at the time of forwarding from point of origin.

#### Item 135

Application of Coastwise Rates from North Atlantic Ports.

(For exception, see Item Nos. 140 and 150).

The Rate Basis Numbers named in this section will only apply on Coastwise traffic originating at South Atlantic and Gulf Ports south of Albemarle Sound, and on traffic originating at interior points moving via said ports, when arriving at origin stations named on pages 5 and 6, via vessel and delivered to the rail carrier direct from shipside or dock of vessel bringing such property to origin stations



named on pages 5 and 6, provided same has not been trans-shipped at any other United States port (Note).

**NOTE**—Trans-shipment as herein mentioned means the unloading of traffic at any port and subsequent reshipment thereof to another port under a new bill of lading or contract of carriage.

The rate to be applied will be that in effect on the date the property is received by the carrier.

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#### *Item 145*

**Application of Coastwise Rates to North Atlantic Ports**  
(For exception, see Item No. 150)

The Rate Basis Numbers named in this section will only apply on Coastwise traffic destined to South America and Gulf Ports south of Albemarle Sound, and on traffic destined to interior points moving via said ports, which is delivered by the Atlantic Port Carriers to the steamer or steamers direct upon arrival at the port or if storage or transit has been accorded by the port carrier at the port under tariffs which permit the application of coastwise rates, and also on traffic delivered to the party entitled to receive it at the carriers' seaboard stations to which coastwise rates apply, which traffic is handled direct from carrier's station to steamship docks and on which required proof of trans-shipment is given.

Shipments not consigned in shipping orders or bills of lading to coastwise points located in the United States south of Albemarle Sound, which are ordered to such destinations after arrival at the seaboard or outer yard or yards, will be subject to the rates, rules and regulations that would have applied if the shipment had been originally consigned for such destination at the time of forwarding from point of origin.

**STATEMENT**  
**SHOWING THE EXPORT, COASTWISE AND INTERCOASTAL**  
**APPLICATION**  
**VIA NORFOLK, VA.**  
**OF CLASS RATES FROM CENTRAL FREIGHT ASSOCIATION TERRI-**  
**TORY ORIGINS AS PUBLISHED IN AGENT B. T. JONES'**  
**TARIFF I. C. C. No. 3642**

(Central Freight Association Freight Tariff 490-B)

The application shown in this exhibit for this tariff is the same as in effect on 14 June 1942.

*Item 3210-B*

Application of Export Rates to North Atlantic Seaboard Ports of Export or Trans-shipment.

The rates named in this tariff, or as same may be amended, and designated as "Export Rates", except as otherwise provided herein, will apply only on traffic which does not leave the possession of the carrier, delivered by the Atlantic Port Terminal carriers direct to the steamer or steamers' docks upon arrival at the port or after storage or transit has been accorded by the port carrier at the port under tariffs which permit the application of the export rates, and also on traffic delivered to the party entitled to receive it at the carriers' seaboard stations to which export rates apply which traffic is handled direct from carriers' stations to steamship docks and on which required proof of exportation or transshipment is given.

*Item 3260*

Shipments handled through United States Navy Yards, etc.

(a) Coastwise, and intercoastal rates shown in this tariff, or as same may be amended, will not apply on shipments destined to foreign countries or foreign possessions of the United States, nor to Pacific Coast points of the United States, Alaska, or British Columbia, or to interior Pacific Coast points via Pacific Coast Ports, nor to South Atlantic or Gulf Ports in the United States south of Albemarle Sound, handled through United States Navy Yards, Naval Bases or Army Bases, or delivered to U. S. Government vessels docked thereat.

(b) Export rates will also apply on shipments consigned on bills of lading for export, destined to foreign countries or foreign possessions of the United States handled through United States Navy Yards, Naval Bases or Army

Bases or delivered to United States government vessels docked thereat, on presentation of proper evidence of exportation.

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*Item 3290*

Application of rates to Virginia ports on coastwise, export and intercostal traffic.

Rates to Newport News, Norfolk and Richmond, Va., and points taking same rates as provided for in Item 3300, apply to points named below:

Station	Railroad	Station	Railroad
Lambert Point, Va.	N. & W. Ry.		N. & W. Ry.
Newport News, Va.	C. & O. Ry.	Portsmouth, Va.	Pennsylvania R.R.
	C. & O. Ry.		S. A. L. Ry.
	(See Note 1, below)		Southern Ry.
	N. & W. Ry.		Vgn. Ry.
	N. S. R.R.		
Norfolk, Va.	Pennsylvania R.R.		A. C. L. R.R.
	S. A. L. Ry.		C. & O. Ry.
	Southern Ry.	Richmond, Va.	(See Note 3, below)
	Vgn. Ry.		R. F. & P. R.R.
			S. A. L. Ry.
			(See Note 2, below)
			Southern Ry.
	N. & W. Ry.		
Pinnars Point, Va.	Southern Ry.	West Norfolk, Va.	Southern Ry.
	Vgn. Ry.		

*Routing*

Except as otherwise provided below, routing instructions provided on pages 857 to 910, will govern.

Shipments moving in connection with the Southern Ry. should be routed as provided on pages 912 to 914, To S. A. L. Ry., stations Norfolk and Portsmouth, Va., route N&W Ry., Kilby, Va. S. A. L. Ry., or via connections of the N. & W. Ry., Kilby, Va., S. A. L. Ry. or via connections to Suffolk, Va, thence S. A. L. Ry.

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To Richmond, Va., in connection with A. C. L. R. R.; or S. A. L. Ry, route via:

Connections and N. Y. C. R. R. (W), Deepwater Bridge, W. Va., Vgn. Ry., Jarratt, Va., thence A. C. L. R. R., or

N. Y. C. R. R. (W), Deepwater Bridge, W. Va., Vgn. Ry., Jarratt, Va., thence A. C. L. R. R., or Connections and N. & W., Ry., Petersburg, Va., thence A. C. L. R. R., or

N. & W. Ry., Petersburg, Va., A. C. L. R. R., or Connections and N. & W. Ry., Petersburg, Va., S. A. L. Ry., or

N. & W. Ry., Petersburg, Va., S. A. L. Ry., or Connections and N. Y. C. R. R. (W), Deepwater Bridge, W. Va., Vgn. Ry., Alberta, Va., thence S. A. L. Ry., or N. Y. C. R. R. (W), Deepwater Bridge, W. Va., Vgn. Ry., Alberta, Va., thence S. A. L. Ry.

NOTE 1.—To C. & O. Ry. station Norfolk, Va., rates on coastwise or intercoastal traffic will apply only on traffic handled over the terminals of the Southgate Terminal Corporation. Export rates to Norfolk, Va., via the C. & O. Ry., as a delivering carrier, do not include wharfage, handling or other terminal charges other than switching.

NOTE 2.—When for account of S. A. L. Ry., rates to Richmond Va., will only apply on traffic in cars alongside wharf of the Richmond Waterfront Terminals, Inc., and do not include absorption of terminal charges.

NOTE 3.—Rates published herein to Richmond, Va., via C. & O. Ry., as a delivering carrier, applicable on export, coastwise or intercoastal traffic, do not include wharfage, handling or other terminal charges other than switching charges.

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## STATEMENT

SHOWING THE COASTWISE, INTERCOASTAL AND EXPORT APPLICATION

VIA NORFOLK, VA.

OF COMMODITY RATES FROM ORIGINS IN CENTRAL FREIGHT ASSOCIATION TERRITORY

PUBLISHED IN AGENT B. T. JONES' TARIFF I. C. C. No. 3758.  
(Central Freight Association Tariff No. 218-N)

Item 13500

## APPLICATION OF COASTWISE RATES TO NORTH ATLANTIC SEABOARD PORTS

The rates named in tariff, or as same may be amended, and designated as "Coastwise Rates" will only apply on traffic destined to coastwise points located in the United



States south of Albemarle Sound, which is delivered by the Atlantic Port carriers to the steamer or steamers direct upon arrival at the port or if storage or transit has been accorded by the port carrier at the port under tariffs which permit the application of the coastwise rates, and also on traffic delivered to the party entitled to receive it at the carriers' seaboard stations to which coastwise rates apply, which traffic is handled direct from the carrier's station to steamship docks and on which required proof of trans-shipment is given.

Shipments not consigned in shipping orders or bills of lading to a coastwise point in the United States south of Albermarle Sound, which are ordered to such destinations after arrival at the seaboard or outer yard or yards, will be subject of the rates, rules and regulations that would have applied had the shipment been originally consigned for such destination at the time of forwarding from point of origin.

*Item 13505*

APPLICATION OF INTERCOASTAL RATES TO NORTH ATLANTIC SEABOARD PORTS

The rates named in tariff, or as same may be amended, and designated as "Intercoastal Rates" will only apply on traffic destined to points on the Pacific Coast of the United States, Alaska and British Columbia and interior Pacific Coast points via Pacific Coast Ports and moving via the Panama Canal, which is delivered by the Atlantic Port carriers to the steamer or steamers direct upon arrival at the port or if storage or transit has been accorded by the port carrier at the port under tariffs which permit the application of the intercoastal rates, and also on traffic delivered to the party entitled to receive it at the carrier's seaboard stations to which intercoastal rates apply, which traffic is handled direct from carrier's stations to steamship docks and on which required proof of trans-shipment is given.

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Shipments not consigned in shipping orders or bills of lading to a point on the Pacific Coast of the United States, Alaska or British Columbia or to an interior Pacific Coast

point via Pacific Coast Ports for movement via Panama Canal, which are ordered to such destinations after arrival at the seaboard or outer yard or yards, will be subject to the rates, rules and regulations that would have applied had the shipment been originally consigned for such destination at the time of forwarding from point of origin.

*Item 13515.*

SHIPMENTS HANDLED THROUGH UNITED STATES NAVY  
YARDS, ETC.

Coastwise and intercoastal rates shown in this tariff, or as same may be amended, will not apply on shipments destined to Pacific Coast points of the United States, Alaska or British Columbia, or interior Pacific Points via Pacific Coast Ports, nor to coastwise points in the United States south of Albemarle Sound, handled through United States Navy Yards, Naval Bases or Army Bases or delivered to United States Government vessels docked thereat.

*Item 14500.*

SHIPMENTS HANDLED THROUGH UNITED STATES NAVY  
YARDS, ETC.

Export rates shown in this tariff, or as same may be amended, will also apply on shipments consigned on bills of lading for export, destined to foreign countries or foreign possessions of the United States handled through United States Navy Yards, Naval Bases or Army Bases or delivered to United States Government vessels docked thereat on presentation of proper evidence of exportation.

*Item 14550.*

APPLICATION OF EXPORT RATES TO NORFOLK, VA.

Export rates to Norfolk, Va., via the C. & O. Ry., as delivering carrier, do not include wharfage, handling or other terminal charges other than switching charges.

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EXHIBIT No. 4

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*Item 14560.*

APPLICATION OF EXPORT RATES TO NORTH ATLANTIC SEABOARD  
PORTS OF EXPORT

The rates named in this tariff, or as same may be amended, and designated as "Export Rates" except as

as it is from official territory. On traffic from the South, the individual rate in the export tariff carrying the line haul rate seems to specify that those rates shall not have ship-side application. There may be 10 per cent of the rates in that tariff which will have such provision and the other 90 per cent would not have. There are not many rates in this tariff that do have shipside application.

293 Q. (By Mr. REYNOLDS): Will you take up Exhibit No. 30.

A. Exhibit No. 30 is an excerpt from Agent R. H. Hoke's General Import Tariff I. C. C. 902 published effective January 29, 1944. This is an import tariff carrying import rates from Norfolk into interior Southern Territory, and it will be seen that that tariff contains a terminal or transit note which provides: "In the absence of specific provisions in this tariff to the contrary, shipments transported under the tariff will be entitled to certain allowances and privileges, which include the allowance of storage if they are so provided in some other tariff."

Then in the same tariff there is a provision that on traffic stored, the import traffic may be stored at the port for a certain length of time and when it is shipped out it shall retain its identity as import traffic, subject to the transit requirement that it shall be registered within 25 days. That registration privilege or provision is contained in paragraph (c) on page 2. The export tariff does not contain any such provision as that. I have no desire to discuss that any further. It can be dealt with on brief.

Q. Take up your next exhibit.

A. The next exhibit consists of one page and will be numbered 31. It shows the number of cars of traffic via the Seaboard Railway during the period June 1, 1943 and May 31, 1944 handled into Norfolk and delivered to the 294 Hampton Roads Port of Embarkation at the Army Base. Those are the only carloads Seaboard handled in that the rates on which they moved were subject to ship-side application. In every instance it is a fact, as the statement will indicate by comparing the applicable rate with the rate to Baltimore that the shipside to Baltimore, which is applicable to Norfolk on this traffic, is the rate that was applicable here because it was lower.

Q. The Baltimore rate is held as the maximum at Norfolk in order to comply with the Fourth Section?

A. Yes, sir. The item containing the domestic rate there shows that in no instance did the export rate charged plus

wharfage and handling exceed the level of the domestic rate. That is all I have to say about that exhibit.

Q. What is your next and last exhibit?

A. Exhibit 32 consists of one page and shows certain Seaboard Air Line Railway piers at Portsmouth, Virginia, and it shows the capacity of those piers as indicated by some past performance over those piers as compared with the number of cars actually moving over those piers recently.

The purpose of that is to show that those piers are capable of handling a great deal more traffic than they are handling today.

Q. Can you approximate the depth of water at those piers, can you state it approximately?

A. I have not examined any sea charts of that area. The only figures I have in mind are figures that were given me by our local people who work on the wharf.

Q. I will ask you if at the present time the piers or slips have been somewhat filled up and could be dredged or made deeper?

A. Oh, yes; they could be made deeper. That is all on that exhibit.

Q. Do you have anything else you care to say?

A. I believe I do want to add this: In the one year analysis I mentioned in connection with Exhibit 31 there was a total of 605 cars involved in that analysis and moving to the base, of which 189 of the cars had neither the block number or "for export" or the bill of lading, which I interpret to mean that even the Army Base people do not contend that they moved over the piers. It was local traffic. I merely point that out to show the extent to which the local traffic is moving into that base. That is all I have.

Mr. REYNOLDS. Mr. Examiner, I ask that Exhibits 23 to 32, inclusive, be received.

Mr. MACGUINEAS. Mr. Examiner, I should like to ask some questions before they are received.

Mr. REYNOLDS. The witness is tendered for cross examination.

#### Cross Examination:

Q. (By Mr. MACGUINEAS). Mr. Wolford, you have no knowledge that any shipment that ever moved over 296 Army Base Piers 1 and 2 since June 15, 1942, consisted of traffic which was transferred to another ship on the high seas, have you?



A. No. I have no knowledge of what became of a single car that was ever delivered there.

Q. So that you do not know whether there is any application at all to that situation that you discussed in your direct testimony?

A. I do not. It is the inability of the railroads to determine whether that is true or not which is one of the grounds we are depending on here to extend our non-allowance to you.

Q. Mr. Wolford, before the war if a commercial shipper sent goods on an export bill of lading through the Port of Norfolk and put it on to a ship, how would you determine whether or not that was transferred to another ship on the high seas?

A. We would not.

Q. You would not know?

A. No, we would not know that.

Q. If it were an applicable commodity under the line haul export rate you would apply the export rate and assume the shipside delivery cost, would you not?

A. Yes, because we would not know, but that would fall in the same category as any other violation of the law that the shipper might make. We would not expect to find all of them. He would finally make a mistake.

Q. Whether it is a private shipper or the government shipping, you would not know the situation that actually occurred?

A. We would not know if it occurred.

Q: Did you not pay commercial shippers on their certification it was exported?

A. Yes, sir.

Q. You pay the Army on its certification it is exported, do you not?

A. I think we are paying all of them on that certification, as far as I know.

Mr. REYNOLDS. Read that answer, will you please?

(The last answer was read.)

Mr. REYNOLDS. You are not paying the Army, are you?

The WITNESS. He is not speaking of the allowance. He is speaking of the line haul rate.

Q. (By Mr. MACGUINEAS). Applying the line haul export rate. Mr. Wolford, are you an attorney?

A. Yes, sir.

Q. Are you a licensed I. C. C. practitioner?

A. Yes, sir.

Q. Turn, please, to paragraph 3 of your Exhibit No. 27, the second paragraph. That is your legal conclusion as to the Interstate Commerce Commission to which you referred above, is that not so?

A. It could be so stated, yes, sir.

Q. Would you state it as anything differently?

298 A. I do not know as I would.

Q. I am asking you. You put it in here. I am asking you what it is.

A. It is my opinion.

Q. Your opinion that the I. C. C. decision is applicable to the Army Base situation, is that so?

A. Yes, sir, and it is so stated.

Q. I take it that is based on certain assumed facts, is that so?

A. It is based on the facts that are stated there.

Q. It is based on the fact that the Army Base is a private facility?

A. Yes.

Q. You are not testifying to that as of your own knowledge, are you?

A. I am testifying that in so far as its relations with the railroads are concerned, those relations are as a private facility.

Q. How much knowledge do you have of the actual operations on Army Base Piers 1 and 2?

A. None beyond the point where the railroad is prevented from knowing, and that is up to the point where we deliver you the cars, then we are through.

Q. You do not know how Army Base, Piers 1 and 2, is being operated at the present time?

299 A. I know in so far as railroad transportation is concerned it is being operated as a private industry.

Q. What do you mean by that? Can you define that?

A. Yes, sir.

Q. Do so.

A. We turn over the traffic to you in exactly the same way as we do to any other private industry. Beyond that I do not know anything about that and beyond that we have no right to know anything about it.

Q. Do you know how the traffic is handled at the Army Base piers?

A. Yes, sir.

Q. By the Norfolk Belt Line?

A. Yes, sir.

Q. Do you know that the Norfolk Belt Line engine brings the cars into the pier track that runs along the middle of the pier?

A. Yes, I know that, and I know the circumstances under which that engine is in there.

Q. Where did you learn about the circumstances?

A. I sat here and listened to sworn testimony.

Q. You are basing your opinion on the facts and the testimony of other witnesses?

A. No, sir. I have conducted a great deal of investigation beforehand.

Q. How did you do that?

A. By going out to the Army Base piers and talking to the people out there at the pier and having them down to my office and talking to them at great length down there.

Q. You got this information from some railroad employees who work around the Army Base? They told you?

A. That is one of the sources.

Q. What other source did you have?

A. I talked with other Norfolk Belt Line employees.

Q. Now, we have two sources. One is the testimony of other witnesses which you have heard in the hearing, and the other is conversation with railroad employees who work upon the base.

A. Exactly.

Q. Any other source?

A. From my own observations out there of such things as I saw.

Q. Just where did you go when you were out there?

A. I went to the main Hampton Boulevard gate and the guard told the group of us that we would have to go into a building there beside the gate and get permits. So we went in there and told the young lady where we wanted to go and to whom we wanted to talk. So she called on the phone to some place, I do not know where, talked to somebody at that time and in due course she proceeded to issue us some permits that we pinned on our coats, which authorized us to go and talk to the railroad's joint agent in warehouse 4. So we proceeded to go down to the warehouse and hunted up his office and had a great deal of trouble finding it and talked with him two or three hours.

301 Q. What else did you do?

A. We got into an automobile, and in coming out we circled around a little bit in order to be able to see as much of the piers as possible, and came on out.

Q. You did not go on to the piers?

A. No, sir, we did not try to go on to the piers.

Q. There is a fence that shuts off the pier from the rest of the base, is there not?

A. No, sir.

Q. There are guards there?

A. I did not see any that seemed to be prohibiting anybody from going on. There were one or two military guards.

Q. You did not try to go on to the base?

A. No. We did not have any authority to go on, so I did not.

• Mr. REYNOLDS. I will say for the information of the gentleman that so far as handling cars to the Army Base is concerned, the lines I represent will rely on the testimony given by Mr. Burrows this morning as to the manner of the handling of the cars.

Mr. MACGUINEAS. Will you make an explicit statement that the testimony of the present witness is not to be taken as any evidence of facts as to the actual mode of operation within the Army base?

The WITNESS. That is all right.

Mr. REYNOLDS. Yes. I will make that statement.

302 Q. (By Mr. MACGUINEAS). Mr. Wolford, will you refer to Exhibit 28, please? Did you prepare these paragraphs which purport to describe the mode of operating the various terminal facilities?

A. I prepared some of it and some of it was prepared for me under my direction. It was kind of a joint operation.

Mr. MACGUINEAS. For the record, may I ask counsel, is this witness intended to be a witness giving facts of the operation at these various terminals?

Mr. REYNOLDS. I will have to ask the witness what he says about that.

The WITNESS. The same answer is true here as it was of the other exhibits. These are the facts as we believe them to be and on which we have acted in our relationship with each of these terminals.

Q. (By Mr. MACGUINEAS). You are not prepared either through testimony or through the exhibit to be giving evidence of the actual facts of operation at the piers, is that correct?



A. That is correct.

Q. Mr. Wolford, will you refer to your Exhibit No. 29, please, paragraph 4.

A. Yes, sir.

Q. Under that provision of the tariff, is your line currently applying export rates on shipments consigned to the United State government and handled over Army Base Piers 1 and 2 for export?

A. I have no doubt they are. That answer is no way concedes the correctness of what may be, but it is on the assurance that you give us.

Q. I understand that. If you will refer to your Exhibit No. 31, does that exhibit show every car which was handled by the Seaboard during the stated period from June 1, 1943 through May 31, 1944, delivered at Army Base Piers 1 and 2, or does it include only certain of such shipments?

A. It includes certain of such shipments.

Q. What is the basis for the inclusion of those?

A. The whole analysis covered all of the cars that moved into the pier of every kind, and then so many of those cars—I gave the figure a while ago—189 of those cars had no designation on them of export or the QMRWE number. The remainder did. So, presumably, the remainder would be export traffic if the assurances contained on there were accurate. So out of all of those export shipments all of them are not subject to shipside rates. This case does not involve any export rates that did not have shipside application, so we were not interested in those. They were eliminated, and this is the remainder.

Q. If I understand correctly you also eliminated in the preparation of this exhibit certain cars containing traffic as to which shipside application tariffs are applicable but you excluded them from your exhibit because the Bill of lading did not carry the O. D. T. block number, is that correct?

304 A. No, sir. This contains all the cars that moved on rates that were subject to shipside application without regard to whether the shipping order had "for export" and the QMRWE number on it.

Q. I see.

A. It is every car or purports to be every car of either of those two kinds that were handled. Of course, it does not include any domestic traffic. That is the kind that did not have any QMRWE number or "for export" on it.

Q. Your exhibit merely shows that during the stated

period your line handled 68 cars of commodities which had the shipside application tariff?

A. That is right.

Q. And the balance of the cars which you actually handled during that period did not have the applicable shipside tariff?

A. That is right.

Q. Will you please refer to your Exhibit No. 32.

A. Well, before you proceed, let me make one correction in the heading which I overlooked making. The word "Coastwise" should appear up there in the heading of the first column. In other words, it should read "Number of Carloads of Coastwise, Export and/or Import Traffic" the pier has accommodated.

Q. Referring to Piers 6 through 10 of the Seaboard which are designated in your exhibit, do you know the last time an ocean-going cargo vessel docked at those piers for either loading or unloading?

305 A. No, except by hearsay from our own people.

Q. You do not actually know?

A. I did not investigate that. It did not seem necessary to support the exhibit.

Q. You do not know whether those piers have sufficient depth of water to carry a modern ocean-going cargo ship or not, do you?

A. I know nothing about the depth of the water. I know that they did handle that traffic during those times, that is all.

Q. As to that you would not say how much of the traffic was coastwise and how much was export?

A. No.

Q. Nor do you know how that traffic was loaded, do you?

A. The mechanical means of loading?

Q. Yes.

A. No, I do not know about that.

Q. You do not know the width of these piers, do you?

A. No.

Q. You do not know what they have in the way of marginal aprons, do you?

A. The width of the marginal aprons?

Q. Yes.

A. No. I think practically all of them have a marginal track.

Q. Those marginal tracks are not on the same level as the pier floor, are they?

A. I do not know about that.

306 Q. They do not have any mechanical hoisting equipment like cranes or derricks, do they?

A. I do not know.

Q. Do you know how old these piers are?

A. I do not know that.

Q. You would not know whether they were designed and constructed to handle export traffic or not, would you?

A. No. I do not know that.

Q. You would not know whether it would have been feasible to load from these Seaboard piers any of the cargo ships which have handled export and import traffic over the Army Base piers for the last two years, would you?

A. I do not know the size of the ships or anything involved, so I would not be able to answer that.

Q. Will you refer to your Exhibit 25, Mr. Wolford. Do you know of your own knowledge with how many of the terminal operators at Norfolk this standard form of agreement with the Seaboard is now actually signed and in effect?

A. I have that information in my files, but at the moment I do not have it available.

Q. You can not tell us?

A. Not at the moment. I can probably give it to you later in the day.

Q. For instance, you do not actually know whether you have this standard form of agreement signed and in effect with Lincoln Tidewater Terminals, do you?

307 A. No. We do not have. I started to say I think the history I gave so stated. I am not sure whether it does or not.

Q. Of course, we have agreed that your statements are not evidence of those facts.

A. Oh, we did not agree to any such thing as that. If I said we had a contract with Lincoln Tidewater Terminals that has nothing to do with the operation of the Lincoln Tidewater Terminals.

Q. Do you actually know whether you have this standard form of contract now in effect with Lincoln Tidewater?

A. I can give you the names of the ones we do have and do not have later in the day and I will answer this way now: I am sure we do not have with Lincoln Tidewater Terminal and I think the history I gave so states that and explains why.

Q. Do you know whether or not you had a standard form of agreement in effect with Transport Trading and Terminal?

A. Whether we did have?

Q. Yes.

A. My recollection is we did?

Q. Are you certain of that?

A. No. I will have to look at the file to refresh my recollection. The history probably states the answer to that question too.

Q. If you will refer to the underscored provisions  
308 in lines 44 and 45 on page 1 of this exhibit which provides that the provisions for absorbing the charges shall not apply to traffic that is the property of the terminal, no such comparable provision is contained in any of your tariffs, is there?

A. I do not believe so.

Q. At Lambert Point docks are you paying the operator of the terminal of those docks? Are you paying the tariff provisions for wharfage and handling on applicable shipments?

A. On commercial traffic?

Q. Yes, at the Lambert Point docks.

A. For any commercial traffic, yes.

Mr. REYNOLDS. For any commercial traffic. Go ahead and complete the answer.

The WITNESS. We would be making the allowance if they were handling any commercial traffic to the extent they are handling commercial traffic for us.

Q. (By Mr. MACGUINEAS). If there is any such traffic over Lambert Point docks your line is paying the allowance to the terminal operator, is that a correct statement?

A. That is correct. Exhibit 28 shows we have a contract with them and we are making the allowance.

Q. I beg your pardon?

A. Exhibit 28 shows we have a contract with them and we are making the allowance.

Q. Well, now, with respect to commercial traffic  
309 which moves over Army Base Piers 1 and 2 at the present time, are you making any terminal allowance there for wharfage and handling?

A. I do not know of any that we have handled where the Seaboard performed the line haul service. As a matter of fact, I do not know that you had ever handled any until I heard General Kilpatrick testify.

Q. So you do not know what the policy of your line would be with respect to the payment of such charges if you handled such traffic?



A. We have never been faced with the problem of formulating a policy in that regard.

Mr. MACGUINEAS. That is all.

Mr. REYNOLDS. Mr. Examiner, I renew the request that Exhibits 23 to 32, inclusive, be received in evidence.

Mr. MACGUINEAS. Subject to the qualification which the witness has stated, I have no objection to them.

Exam. DISQUE. They will be received.

(Defendants' Exhibits 23 to 32, Witness Wolford, received in evidence.)

(Witness excused.)

CHARLES F. THEOBOLD, was sworn and testified as follows:

Direct Examination.

Q. (By Mr. REYNOLDS). What is your position with the Atlantic Coast Line Railroad?

310 A. Assistant to the general freight agent.

Q. Yesterday, Major Heimbaugh testified that the Atlantic Coast Line paid the Lincoln Tidewater Terminal \$544.68 in May, 1943, for wharfage and handling. Will you please explain that payment?

A. Yes. We have received a number of bills from Lincoln Tidewater Terminals which were rendered on the theory—

Mr. MACGUINEAS. Will you qualify this witness first as to this transaction?

Q. (By Mr. REYNOLDS). Did you investigate to find out the circumstances surrounding the payment by your company of the \$544.68?

A. Yes, sir, I did.

Q. Will you please explain those circumstances?

A. Yes.

Mr. MACGUINEAS. May I ask how you conducted that investigation?

The WITNESS. By going to our freight office here and examining the records and getting the bills. I should state here in the case of payments to Lincoln Tidewater I have the receipted bills. In the case of bills which they have rendered but which we have not paid I have their bills which have never been marked "paid."

After a great deal of search we found that we had paid four bills of the Lincoln Tidewater Terminal and  
311 four only. In each case the bills covered shipments either to the terminal operated by Lincoln Tidewater Terminals or from their terminal on rates which did not apply to or from shipside and the amount of the wharfage

and handling charges had been collected from the shipper or consignee. The payment of those amounts to the Lincoln Tidewater Terminal, therefore, was not payment of money of the Atlantic Coast Line Railroad but merely of money that had been advanced to the Atlantic Coast Line Railroad.

Q. (By Mr. REYNOLDS). Go into more detail in your explanation of the payment of the \$544.68. First, what did the payment consist of?

A. It consisted of 55 carloads of leaf tobacco.

Q. Were the shipments made collect or prepaid?

A. They were prepaid by the shipper.

Q. Did the amount prepaid include the wharfage and handling in addition to the line haul?

A. Yes, sir.

Mr. MACGUINEAS. Will you read what your freight bill says.

The WITNESS. This is not the freight bill. This is bill of the Lincoln Tidewater Terminal.

Q. (By Mr. MACGUINEAS). How did you determine that the shipper had prepaid?

A. From the car number and the other records that are kept at the freight office.

Q. What records?

A. The records of freight handled. On every car  
312 that is handled into Norfolk by the Atlantic Coast Line we have copies of the freight bills.

Q. Did you look at these freight bills?

A. I did not look at the individual freight bills, no. I had them down at the freight office. I had that information gathered for me.

Q. All I am concerned with is finding out how you were sure these shippers prepaid the handling charges. That is what I am trying to find out.

A. That information was obtained from the freight bills, copies of which are on file at the local office of the Atlantic Coast Line here in Norfolk.

Q. (By Mr. REYNOLDS). You did not get it yourself, but you had it done?

A. I had it done, yes, sir.

Q. The Atlantic Coast Line having received money for wharfage and handling turned the money over to the Lincoln Tidewater?

A. That is correct, yes, sir.

Q. Were there other payments that you made under similar circumstances?

A. Under similar circumstances, yes.

Q. That is to say, the wharfage and handling charges were either included in the amount prepaid or they were billed?

A. As advances.

Q. As advances?

313 A. Yes, sir.

Q. Does the Atlantic Coast Line Railroad have contracts with shippers and receivers of freight who own their own piers?

A. We have a contract with the Imperial Tobacco Company here that own their own piers.

Q. We will refer specifically to the contract of the Imperial Tobacco Company. You have that here with you?

A. Yes, sir.

Mr. REYNOLDS. May that be identified as Exhibit No. 33? (Defendants' Exhibit 33, Witness Theobald, marked for Identification.)

Q. (By Mr. REYNOLDS). What does that contract provide with respect to wharfage and handling charges on traffic owned by the Imperial Tobacco Company?

A. That the allowance for wharfage and handling shall not be made on property of the Imperial Tobacco Company.

Q. Is that same provision carried in other contracts that you have with persons who own their own piers?

A. Or operate piers, yes, sir.

Q. With persons who either own or operate piers?

A. Yes, sir.

Q. Have you made a check of the traffic which moved via the Atlantic Coast Line during the twelve months' period and was consigned to Army Base Piers 1 and 2?

A. Yes, sir.

314 Q. What does this check show with respect to whether or not the traffic moved under shipside rates?

A. We were unable to find a single instance in the 12-month period where we handled a car of freight to the Army Base pier in Norfolk on a shipside rate.

Mr. REYNOLDS. I will state to counsel on the other side that we have an exhibit showing each individual shipment and the rate and charge for moving, but in view of the objection made yesterday on the ground of security, I have not asked the witness to offer any evidence on that exhibit.

Mr. MACGUINEAS. I appreciate your position and that is quite agreeable.

Mr. REYNOLDS: If you want to inspect it, it is here.

Q. (By Mr. REYNOLDS). Approximately how many of those shipments moving in the 12-month period had no symbols?

A. No symbol with respect to the possibility it might be export freight?

Q. Yes.

A. Do you want me to give you the number of cars or just the percentage?

Q. Just the percentage.

A. 43 per cent of the cars we brought into the Army Base during that 12-months' period bore no sign of any kind of an export character.

Q. Does the Atlantic Coast Line Railroad Tariff No. B-3068, which is referred to in the complaint, provide that your company will absorb the wharfage and handling charges on export traffic at Norfolk, Virginia?

A. It does not.

Mr. REYNOLDS. That is all I have. I ask that Exhibit 33 be received and I may also state to counsel that we have the original of this contract.

Mr. MACGUINEAS. No objection.

Exam. DISQUE. Received.

(Defendants' Exhibit 33, Witness Theobald, received in evidence.)

#### Cross Examination.

Q. (By Mr. MACGUINEAS). Mr. Theobald, you stated that all of the shipments which were examined under your supervision consisted of commodities as to which there is no applicable shipside export rate; is that correct?

A. As to which the applicable rate did not apply to shipside, that is correct.

Q. In other words, in your tariffs it is only by specific designation by commodity that the shipside rate is applicable?

A. Not by commodity, but by some provision in the tariff.

Q. When you stated that 43 per cent of the freight bills contained no reference to export, those were freight bills on shipments as to which the shipside rate was not applicable, is that correct?

A. Let me answer the question in this way: We examined the tariff rates on all of the shipments handled in the 12-month period with the possible exception of some cars that had such a tremendous mixture of freight



in it, a few pounds of this and a few pounds of that—we examined the tariffs on all of the shipments, and with the exception I just stated, I could not find any shipside rate that applied to any of those shipments whether in the 43 per cent or not.

Q. Who made the examination of the bills of lading to determine whether they contained any reference to export?

A. I did not examine the bills of lading.

Q. Well, what documents did you examine to determine whether provision for export was noted?

A. The freight bills on file in the office of the Atlantic Coast Line.

Q. Just the freight bills?

A. Yes, sir.

Q. Is it correct to say that the copies of the freight bills which you examined were your carriers retained copies and not the copies which you transmit to the Army for payment?

A. Of course, we could not examine the copies that the Army had. They were carbon copies, exact copies.

Q. So that, of course, you have no means of knowing whether the export certification was or was not stamped on the copies of those freight bills which go through for payment, have you?

A. No, sir, we do not have that.

Q. With reference to the payment which your line  
317 made to the Lincoln Tidewater Terminals, you said, I believe, that your freight bills show that the shipper had either prepaid the handling charge or that you had paid it as an advance to him?

A. Yes, sir.

Q. In what form was that designation made on the freight bill?

A. The freight bills on the shipments to the base—I mean to the terminal, that is, shipments that would be exported, carried the word “prepaid” in a column for that purpose on the freight bills. The few cars that were handled from the terminal and were apparently imported, the amount of the wharfage charges were shown in a separate column labeled “advances.”

Q. Well, now, referring to the export shipments, that is to say, the shipments which your line carried to the terminal, do you know how the freight bills designated the prepayment? What did it show?

A. I just said the word “prepaid” appears in type-written language on the space for that purpose.

Q. How was the amount of the bill shown, just a lump sum, so many dollars?

A. It shows the number of bales or hogsheads or whatever it was and the rate, and the rate times the number of pounds. The weight was shown and the rate, plus the number of pounds, and the total charges, and then in a separate column the word "prepaid". Otherwise our agent would have been obliged to go out and collect the freight charges.

318 Q. I do not understand how you can determine, if that is all the freight bill said, that the prepayment related to anything more than the tariff rate?

A. The freight bill also had the usual endorsement so much wharfage and handling, that was added to the total of the freight charges for a grand total of the bill.

Q. Did you observe that yourself?

A. No. I had that done for me by the local office.

Mr. REYNOLDS. It was done while you were up here listening at this hearing?

The WITNESS. Well, when yesterday it was said that the Atlantic Coast Line paid 500 some odd dollars, I was rather surprised, because I did not know we had paid them any such amount of money; so I immediately set to work to check up on it.

Q. (By Mr. MACGUINEAS). How do you know what these freight bills actually did state? You did not see them.

A. I did not see them, but we have competent employees at the local freight office to do work like that.

Q. And they just told you verbally what was on the freight bill?

A. That is correct.

Q. Did that person specifically tell you that the prepaid bill listed separately wharfage and handling?

A. I can not say that he did. I can give you the exact language in which he gave me the information.

Mr. MACGUINEAS. That is all.

#### Re-direct Examination.

Q. (By Mr. REYNOLDS). With respect to 43 per cent of the shipments that did not contain on the freight bill any indication that they were for export, if I understand you correctly 57 per cent of the shipments did contain such indication?

A. They contained some hint in a small part of them, the 57 per cent, the words "for export" were shown on the bill, and, conversely, on a portion of the 43 per cent the word

"not for export" or some declaration was shown on the freight bill.

Mr. REYNOLDS. That is all.

(Witness excused.)

Mr. COUSINS. May I ask Major Heimbaugh a question?

HAYS M. HEIMBAUGH, recalled, having previously been sworn, testified further as follows:

Direct Examination.

Q. (By Mr. COUSINS). Major Heimbaugh, this morning when you testified to an-export certification on certain bills of lading, did you mean to say that that was a stamp put on there by some Army officer and the document was then turned over to the government pay agency but that that was never furnished to the railroad in any way?

A. This provision in the tariff, you recall, about 320 shipments moving over Army bases says that the export rate shall apply in such instances. It says: "Upon evidence of proper certification."

Q. Yes.

A. This stamp endorsement that you see on this bill is an endorsement that the transportation officer puts on those bills so that the finance officer in Washington and the general accounting office later in the audit will know upon what basis they should make final settlement. Whether or not the carriers present a copy of the freight bills to the transportation officer for his endorsement with respect to importation, whether they do that at any time or in all cases or only part of the time, I have no knowledge, but as to the bills that go through for payment that endorsement is made when it is proper.

Q. All you will say then is that that stamp is presented to the government paying office as evidence to him, but you have not said it is presented to the railroad as evidence to them. Is that so?

A. In effect, that is correct. So far as I know, if you will give us a copy of the freight bill and ask us to have it stamped, we would stamp it. I can only comment respecting the freight bills that have gone through channels at Washington that I was able to obtain.

Mr. COUSINS. That is all.

(Witness excused.)

321 CARL W. DILLI, was sworn and testified as follows:

Direct Examination.

Q. (By Mr. DIXON). What is your connection with the Southern Railway System, Mr. Dilli?

A. I am assistant to the freight traffic manager.

Q. Your headquarters are at Washington, D. C.?

A. That is correct.

Q. Will you give a brief outline of your railroad experience, Mr. Dilli?

A. I have been employed by the Southern Railway for the past 25 years, the principal part of that time in the traffic department in the handling of freight rates and other matters pertaining thereto.

Q. Have you studied the issues involved in this complaint?

A. I have.

Q. Yesterday did you hear testimony to the effect that the Southern Railway had paid to Lincoln Tidewater Terminals the sum of \$3,000 in 1942?

A. I did.

Q. Have you looked into that transaction?

A. I have.

Q. What investigation have you made?

A. The investigation that I made develops that there was a movement of or through the Lincoln Tidewater Terminals, to a point in Alabama, consigned to the Reynolds Corporation at that point. The rate does not apply to shipside. In other words, it is subject to the wharfage, but no handling. We collected the charges from the consignee down there in Alabama and made payment of such charges as collected to the Lincoln Tidewater Company.

Q. Those are the wharfage charges?

A. Yes, sir, the wharfage charges.

Q. Will you please state what ports the Southern Railway serves?

A. Do you want all of them?

Q. Beginning at Norfolk.

A. Norfolk, Charleston, Savannah, Brunswick, Jacksonville, Mobile and New Orleans.

Q. Does the Southern make any allowance for wharfage and handling on freight moving under shipside rate to those ports where freight is owned by the operator of the facility?

A. None whatsoever.

Q. You have prepared an exhibit to be introduced in this proceeding?

A. I have.

Mr. Dixon, May we have that identified as Exhibit No.



(Defendants' Exhibit 34, Witness Dilli, marked for Identification.)

323 Q. (By Mr. Dixon). Before taking up your exhibit, it, will you briefly tell us what is the general practice of the Southern Railway in particular and the Southern lines in general in establishing rates on import and export traffic to and from southern ports?

A. At page 8 of the complaint, it is alleged "No adjustment was made in the line haul rates applicable to and from Norfolk, Virginia, at the time when the control and operation of the facilities of Transport, Trading and Terminal Corporation were assumed by the War Department on June 15, 1942, nor has any adjustment since been made."

In establishing rates on export or import traffic to or from points in Southern Territory to or from Virginia and South Atlantic ports, it is the practice of the Southern carriers to publish the rates subject to the addition of wharfage and handling charges. In other words, the rates are not published to include the wharfage and handling charges. There are instances, however, where we publish rates that do include these charges, but that is the exception rather than the rule. Another exception is that from Ohio River Crossings, we have established rates which include the wharfage and handling charges to enable us to compete with the port of Baltimore. The rates from the competitive territory are made the same as to Baltimore because the rates to that port include the wharfage and handling charges.

324 At page 608 of the report of the Commission in

I. C. C. Docket 12681, involving charges for wharfage, handling and storage and other accessorial services at Atlantic & Gulf ports, reported at 157 I. C. C. 663, the Commission referred to the fact that "The method of publishing the rates at South Atlantic ports is generally different from that at North Atlantic ports as the port charges are published separately from the line haul rates. Agency traffic in which the rail carriers serving these carriers generally concur, contain separate charges for storage, handling and wharfage and other port charges which apply on most of the traffic between Southeastern Territory and these ports."

I believe it well at this point before taking up the detailed discussion of the movement and the rates applicable thereon to point to the fact that, in a number of cases the most recent one being reported at 243 I. C. C. 525, page 536,

the Commission has said: "Moreover, we have frequently said in effect that there is nothing inherent in coastwise or foreign traffic which entitles it to rates lower than those applied to domestic traffic."

Q. Is what you have said generally true with respect to the rate to and from the Gulf ports?

A. That is true.

Q. As well as Virginia and South Atlantic?

A. That would cover in general the ports extending from Norfolk around to New Orleans.

325 Q. Where you referred to the exception covering the rates applying from the Ohio River Crossings, those rates being on a competitive basis with Baltimore, would that apply also from origins north of the Ohio River?

A. That is true, yes, sir.

Q. Now, Mr. Dilli, let us take page 1 of the exhibit and discuss it.

A. This page shows the number of cars of what we have to assume to be both domestic and export traffic moving to Norfolk for subsequent transfer to Army Base 1 and 2. It shows the symbol and the name of the consignee as represented by the symbol.

I want to explain here that this movement was taken from our switching tickets. At the time we made the investigation at Norfolk we had to depend on the switching tickets to take off the movement because of manpower and lack of sufficient time to prepare the data for the case that was set a few weeks back. The record on the switching tickets was taken from the transportation papers, and if the transportation papers showed that there was a symbol QMRWE, we assumed that traffic to be export traffic. If it did not contain that symbol, we did not assume it to be export traffic but, rather, domestic traffic. In that respect I may say our examination showed there was a great volume of commodities known as pallets and a very substantial movement of lumber. In the case of the lumber,

326 there were quite a number of shipments that moved on straight bills which had reference to the fact that government bill of lading would subsequently be substituted for the straight bill of lading. In respect to the pallets, it is hard to describe that. It is a native wood. They have three or four pieces in one direction and I understand they are used to put in the hold of a ship before the cargo is placed on and in some instances are used to fill in ends. That is the information we developed.

Q. Can you tell from page 1 of this exhibit how many of these shipments moved on shipside rates and how many did not?

A. No, I can not. In a subsequent exhibit I will be able to show you that, but not on this page.

Q. Is that all you have to say on that page?

A. Yes, sir.

Q. Let us turn to page 2.

A. Page 2 consists of excerpts from Southern Railway port charges tariff, showing Item 80-A, Item 85. Item A at the top is a reissue of Item 80. The reissue took place in supplement issued July 6, 1944, whereby we cancelled out from the tariff the Transport Trading and Terminal Company.

Q. Right at that point, Exhibit No. 4, page 32, shows that the Transport Trading and Terminal Corporation is still included in Item 80 of the tariff, does it not?

A. Yes, sir.

Q. Have you examined the exhibit?

A. Yes, I have examined it. It does show that, that reference to Item 80, whereas my exhibit refers to Item 80-A.

327 Q. Exhibit 4 is incorrect?

A. It is incorrect in that it does show that the Transport Trading and Terminal Company is still in the tariff, whereas they were cancelled out effective July 6.

Q. Why were they not cancelled before July 6?

A. We formerly had an agreement with Transport Trading and Terminal Company. That agreement by mutual consent of parties was terminated on July 15, 1942.

Q. Are you testifying of your own knowledge now?

A. Yes, sir. I have examined all these agreements. I may say that the Southern Railway makes the agreements and they are joint agreements in most every instance between all of the Southern lines serving Norfolk. We prepare the exhibit in the main. It is submitted to the other carriers for their signature as well as the signature of the wharfage or terminal companies. We have the records on file in our Washington office. The agreement with the Transport Trading and Terminal Company was terminated on July 15, 1944. (1942). For some unaccountable reason it continued in the tariff. When I started my investigation of this complaint I run into it and we cancelled it out.

Q. I notice on page 32 of Exhibit 4, Item 80, as well as

page 2 of your Exhibit Item 80-A, show the Southgate Terminals. Are they still in business?

A. I do not understand that they are. I am advised that they are not in business.

328 Q. So that they should come out of the tariff, too?

A. Yes.

Q. Go ahead.

A. I probably should go on and explain that the Lincoln Tidewater Terminal is shown in Item A and Item A is primarily for switching.

Q. You mean 80-A?

A. Yes. Item 85 covers the terminals which we would switch or lightering.

Q. The first concern in Item 85 is the Imperial Tobacco Company, Berkley Terminals?

A. Yes, sir.

Q. We have had some testimony about that before. Will you explain the arrangement between the Imperial Tobacco Company and the Southern Railway?

A. Yes. With the exception of Imperial Tobacco Company none of the terminal companies so far as our investigation develops have any traffic that is owned by the terminal company. Should there be any such traffic, no allowances would be made for the obvious reason that we have no tariff provisions to that effect.

Imperial Tobacco Company is in the same category as the government operation at Army Base Piers 1 and 2, in that it handles traffic of which it is the owner, such as tobacco, staves and perhaps other tobacco accessories. Our agreement with Imperial provides that 329 no allowance will be made to the terminal for the handling of its own traffic. We have made no allowances on such traffic. We have made no allowances to any terminal company including the government on traffic owned by the terminal and moving over the terminal.

Q. Have you anything further to say about page 2?

A. I have not.

Q. Page 3 seems to quote an item from Agent Hoke's I. C. C. No. 712. I believe Major Heimbaugh quoted the same item in one of his exhibits. We can just skip that.

A. Yes.

Q. What have you to say about page 4?

A. Page 4 shows the rates to Norfolk and the distances from representative southern points and the all-rail and rail-water rates to Baltimore. The purpose of the exhibit is to show that in accordance with the provisions of Item



130 of Hoke's Georgia Tariff, as shown in the previous page, in instances where the rate to Norfolk plus wharfage handling charge would be greater than the rail and water rate to Baltimore on export traffic the Baltimore rate would apply.

That situation was brought about by reason of departures under the Fourth Section. In other words, where the Commission prescribed the rates to Norfolk in Docket 13494, as subsequently advanced, it was found that the rates to Norfolk were higher when you added to them the wharfage and handling charge than the rates to Baltimore. So to clear up the departure under Section 4, the Commission required us to observe the Baltimore rates as maximum.

Q. Turn to page 5 and tell us about that.

A. Do you want me to go ahead?

Q. Yes, go ahead.

A. Page 5 shows a representative number of cars, 163. We show the origin and destination, of course, being Norfolk, the commodity and the rates applicable thereon. We show what rate it did move on, that is, under the domestic column, and the classification; then we show that the export rate in every instance on this exhibit is the Baltimore rate as maximum. As previously explained, that was brought about by reason of the fact that if you added the domestic and the wharfage handling rate it exceeded the Baltimore rate.

Q. These cars, as I understand it, moved under shipside rates?

A. Yes, sir, under the Baltimore rail-water shipside rates. In the column marked "Remarks" we have shown that in the case of the rates opposite lines 1 to 7 the class rates have been applied and those class rates were prescribed by the Commission in Docket 13494.

Q. Take up line 1 on automobiles. It shows one car. Tell us how you read that.

A. The domestic rate to Norfolk would be 189 as shown on page 4. Then we show what the actual rate assessed was, 189.

331 It happens in that instance that the export rate is the same as the domestic rate. But if you add to the 189 the wharfage handling charge you would get something higher than 189. By reason of that you must apply the rates shown under Baltimore as maximum, which is the Baltimore rail and water rate.

Q. In other words, on that shipment the export rate of

189. has a little asterisk beside it. That is the Baltimore rate?

A. That is correct. That is shown by the asterisk.

Q. Go ahead.

A. So there will not be any question about it, we show what the Baltimore rate is in the last column of rates.

Q. Proceed.

A. As I was about to say, opposite lines 8 to 12 we show certain rates. They moved on column ratings. Under "Remarks" we show the ratings or columns that have been approved or prescribed by the Interstate Commerce Commission.

The purpose of that exhibit is to show that the rates at best are not in excess of maximum reasonable rates. What is true in respect to the lines I have already referred to is true in respect to the lower part of the exhibit.

Q. Let us turn to page 6. That seems to be an excerpt from Agent Hoke's Southern Export Tariff No. 705-F. I do not believe any explanation is necessary.

A. That has already been explained and I do not think you need to refer to it further.

332 Q. Refer to page 7 and tell us what that is.

A. Page 7 is statement of the number of cars that moved to Norfolk under specific export rates. I do want to call attention to the fact that the export rates on cigarettes and tobacco, as indicated by the symbol M are truck competitive rates, which obviously are depressed. That can be very readily verified by the fact that the domestic rate to both Baltimore and Norfolk is 55 cents per 100 pounds.

Q. Do you have anything further you wish to say?

A. I think not.

Mr. Dixon. Mr. Examiner, we offer in evidence Exhibit No. 34.

Exam. DISQUE. It will be received.

(Defendants' Exhibit 34, Witness Dilli, received in evidence.)

Cross Examination.

Q. (By Mr. MacGUINEAS). Mr. Dilli, in your opinion, under your tariff which calls for shipside delivery, what do you consider your obligation to be to effectuate shipside delivery?

A. Well, on traffic that would not be owned by the operator of the freight, it would be our obligation to put it alongside the ship.

Q. In other words, general shipside delivery under your tariffs means for the carrier to unload the car and put the traffic alongside the ship's berth; is that correct?

A. I think that is correct, on traffic that is not the property of the wharfers.

Q. Do your tariffs contain that qualification about property not belonging to the man operating the wharf?

A. No, but our agreements do. Our tariffs would not have to contain that.

Q. Your tariffs do not contain any such language?

A. No.

Q. You have not given the shippers notice of that qualification, have you?

A. No, not in the light it is not included in the tariff.

Q. Let me put one more question along that same line. At the Army Base Piers now you are not unloading the cars for export, are you?

A. No.

Q. As to those shipments which move under shipside rates, do you consider you are making shipside delivery?

A. We are applying a shipside rate.

Q. Do you consider you are making shipside delivery?

A. We cannot make shipside delivery.

Q. You are not doing it?

A. No.

Q. You testified earlier about the circumstances under which you made payment to the Lincoln Tidewater Terminals of \$3,206, is that correct?

A. I did not specify the exact amount. I did not know the exact amount until you mentioned it yesterday.

Q. That is the amount to which Major Heimbaugh testified. That is the one you examined?

A. Yes, sir.

Q. Did you conduct any examination of the circumstances of any other payment which the Southern may have made to Lincoln Tidewater Terminals?

A. I do not know of any others.

Q. You are not sure whether any others have been made?

A. I would not know unless I went into a great detailed examination and examined our files in the Washington office, and I do not have them with me. Either that, or make an investigation to our local representatives. I have talked with them about it. He does not tell me of any others he knows of.

Q. Do I gather that in the preparation of your exhibit where you list a car as domestic you have assumed that shipment to be domestic because the bill of lading did not contain the O. D. T. block number?

A. That is one of the assumptions of the principal ones, but in the case of pallets I understand that is used, as I explained, in the bottom of ships. That is dunnage. It would not be export traffic and a very substantial movement of that incidentally. On those shipments or the records from which we took our movements did not contain the QMRWE symbol.

335 Q. Will you refer to page 1 of your exhibit, please? You list in there Southern Railway traffic delivered to the government. Delivered where?

A. Well, the heading, of course, in just incidental. That would be traffic that was delivered to the Belt Line for delivery to the Army Base.

Q. That is all you know about that?

A. That is correct. The switching ticket showed to whom it was consigned in the Army Base.

Q. I understand that. I assume then from your previous answer that we have no way of knowing how much of this traffic, if any, ever passed over Army Base Piers 1 and 2?

A. No. We do not know. We do not know what transpires over there. All we know is that this is traffic that reached Norfolk by the Southern Railway, subsequently delivered to the Belt Line for delivery to the Base, and that the tickets from which we made the record carried symbols as shown on the page. We have not been able to determine from those symbols the government agency to whom it was consigned.

Q. Well, since there is no way of demonstrating how much of this traffic passed over Army Base Piers 1 and 2, I am somewhat at a loss to understand the relevance of the exhibit. Can you explain that?

A. We thought it important in every case to show the volume of movement.

336 Q. As long as you understand that it does not necessarily show the volume of movement of traffic over Army Base Piers 1 and 2.

A. I do not know what becomes of it after it leaves the possession of the railroads.

Q. You referred to the provisions of your contract with the Imperial Tobacco Company to the effect that allowances would not be paid on tobacco owned by that company.

A. Under no circumstances. We make no payment to Imperial or any other terminal company.



Q. Your tariffs do not say anything about that, do they?

A. They do not have to. The tariffs do not have to say you will not do a thing. It has to say what you will do.

Q. It does not say anything about that?

A. No, it does not.

Mr. MacGUINEAS. That is all.

(Witness excused.)

C. H. WARE was sworn and testified as follows:

Direct Examination:

The WITNESS. My name is C. H. Ware. I am traffic manager of the Norfolk Southern Railway Company and I have been connected with the traffic department of the Norfolk Southern for approximately 23 years. I have held the position of rate clerk, chief clerk in the general  
337 freight office, assistant general freight agent, general freight agent, and my present position as traffic manager. I think I am familiar with this proceeding.

With respect to allowance to the Lincoln Tidewater Terminals a check was made of our records which indicate that in February and March, 1943, the Norfolk Southern paid in the form of wharfage and handling charges to Lincoln Tidewater Company \$1,057.99. All except \$160.32 of that amount was paid on leaf tobacco which moved to Norfolk on a domestic rate. The wharfage and handling charges were in addition and the wharfage and handling charges and the line haul charges were prepaid. There was \$160.32 paid on carload shipments of steel bars, which represented wharfage only. The charges on these shipments were also prepaid and the wharfage charge was prepaid.

I have made a check of our records for the period June 1, 1943 to May 31, 1944, to determine the number of carload shipments which the Norfolk Southern has handled to Norfolk and delivered to the Army Base at Norfolk through the Norfolk-Portsmouth Belt Line during that period of time. I have a statement in detail giving the total number of cars but I will not submit it if the complainant would rather me just refer to it as several hundred cars as the total.

Mr. MacGUINEAS. That is adequate for our purposes, if you are satisfied.

The WITNESS. There were several hundred cars.  
338 Of that number there were only 12 cars that were subject to the Baltimore rate held as maximum at Norfolk. There were six additional cars of that moving to

Norfolk on a specific shipside rate, which is a depressed truck competitive rate. In other words, the normal domestic rate is 55 cents per hundred pounds and the specific shipside depressed rate is 39 cents per hundred pounds.

Out of the several hundred cars which moved only 62 per cent of the total did not show a symbol to indicate that they were export traffic. As to whether the cars were actually exported or not, I do not know, but they were not subject to shipside rates. In other words, I have stated in specific numbers the cars that were subject to the Baltimore rate as maximum, which is the shipside rate, and the specific rate on six additional cars.

Q. (By Mr. MACGUINEAS). Can you tell us at this point what the symbols you have in mind?

A. The symbol I had in mind was QMRWE. That is all I have to offer.

Q. (By Mr. WINN). In referring to the \$100 payment which you made, I do not know that you made it clear on the record whether that \$100 represented a sum which was a charge for wharfage and handling in addition to the line haul rate. You said it was prepaid.

A. Yes. It was a charge of \$160.32 and that was 339 in addition to the line haul rate.

Q. I knew you wanted to make that clear on the record.

A. Yes. I thank you.

#### Cross Examination.

Q. (By Mr. MACGUINEAS). You referred to several hundred cars during this period as delivered to the Army Base. Will you explain what that means?

A. That means that we delivered the cars to the Norfolk-Portsmouth Belt Line Railroad and they carried the cars to the property and delivered them on the Army Base property upon instructions from the officers or the yard masters in charge of the Army base.

Q. Of course, you have no way of knowing how much, if any, of that traffic went over the Army Base Piers 1 and 2 we are concerned with here, have you?

A. No, sir, I have not any way of knowing that.

One other thing I would like to say. We do not make an allowance in any case to the owner of property. We have a contract with the Imperial Tobacco Company which is similar to that of the other southern carriers specifically providing that allowance will not be made on the Imperial Tobacco Company's own freight.

Q. In that connection, Mr. Ware, do your tariffs name the Imperial Tobacco Company as a terminal at which you will absorb?

A. Yes, our tariff names in all cases the terminal  
340 at which we will absorb.

Q. And pay allowances?

A. Yes, sir.

Q. And the tariff itself does not make that qualification which you have stated as to ownership of the property?

A. No. That is covered by contract with the terminal company.

Q. Did you in your investigation run across a shipment of ore over your line from El Paso, Texas, in December of 1943—

A. It is the reverse of that.

Q. It is the reverse, from the terminal to El Paso, Texas.

A. Well, in my investigation I was merely investigating those allowances made to the Tidewater Terminal. I am familiar with the shipment you have reference to, a movement of 6,000 or more tons that moved through the Army Base at the request of Captain J. R. Bull, who comes under the command of General Kilpatrick. We billed it at 1 cent wharfage, with a wharfage charge of 1 cent per hundred pounds. The charge was collected at destination from the consignee and turned over to the Army Base.

Q. Well, was that not a shipside application rate?

A. No, sir.

Q. It was not?

A. No, sir. It does not include that. I think the rate from Baltimore was a shipside rate, but it would not apply on this particular shipment. On these particular shipments the Baltimore rate was not actually applicable at the  
341 time the shipment moved from Norfolk via the route it moved. The Baltimore rate included wharfage only and not handling.

Mr. MacGUINEAS. That is all.

(Witness excused.)

S. H. WILLIAMS, was sworn and testified as follows:

#### Direct Examination:

The WITNESS. My name is Samuel H. Williams. I am director of the Transportation Bureau, Chamber of Commerce and Board of Trade of Philadelphia. That organization was created for the purpose of promoting and advancing the commerce, business, and manufacturing interests of the city and port of Philadelphia.

The port of Philadelphia is in competition with each of the North Atlantic ports, including Norfolk, as well as all of the Atlantic and Gulf ports.

Our position in this case is substantially the same as that stated by Mr. Laux of the Port of New York Authority, and Mr. Seal for the Baltimore Association of Commerce. I do have further evidence, an exhibit or two exhibits, which I wish to present and they may be duplication to an extent of the evidence that is already in the record in Mr. Hodgkinson's Exhibit No. 8. It does present a somewhat different picture, however.

I offer for identification Exhibit No. 35, consisting of 14 pages, which is a comparison of the short line mileage distances and present domestic export, import, inter-  
342 coastal and coastwise first and fifth class rates between Philadelphia and Norfolk, on the one hand, and 105 Central Freight Association Territory key points on the other.

I also offer for identification a map, as Exhibit No. 36. (Intervener's Exhibits 35 and 36, Witness Williams, marked for identification.)

The WITNESS. The colored area in Exhibit 36 is the interior origin and destination territory of Exhibit No. 35. You will please insert the No. 35 at the lower right hand corner of that exhibit so it will read: "for rates see Exhibit No. 35."

The points in this exhibit are identically the same as those in Exhibit 8 except Parkersburg, and West Virginia, are not included in my exhibit. Classes 1 and 5 are representative of all classes and the difference in the first class as shown in the exhibit correspond to the existing tariff differences on first and second classes, whereas the fifth class differences correspond with the differences on classes third and lower.

Section 1 of the exhibit, pages 1 to 12, inclusive, covers the territory colored yellow on map Exhibit No. 36 and Section 2, pages 12 and 13, cover the territory on the map colored in blue. By reference to page 14 of Exhibit No. 35, it will be noted that the average short line distance between 94 points in section 2 and Philadelphia is  
343 779.9 miles, whereas the Norfolk average distance is 86.1 miles greater or 866. It will also be noted that these differences are reflected in the average domestic rates, the average rates being lower with respect to Philadelphia, whereas on the ports rates on export, import, coastwise and



intercoastal rates, the differences are 1 cent on eastbound and 2 cents on first class and 1 cent on fifth class on westbound less with respect to Norfolk and Philadelphia.

Section 2 shows the average situation with respect to the blue territory of 11 points and the latter part of the summary shows the average of the situation as a whole.

That is all I have to offer, Mr. Examiner, except to say that we are opposed to any action here which would result in further advantaging Norfolk in its relationship with Philadelphia in export and import rates.

Q. (By Mr. WINN). Is not that territory shown on your map Exhibit 36 in yellow an important origin and destination territory for export and import traffic?

A. It is. With respect to all of the ports the competition there is very keen.

Q. If the line haul rates to Norfolk were reduced by eliminating the handling and wharfage charges, you would have Norfolk's preference or change in that important area substantially increased?

A. Exactly.

344 Mr. WINN. That is all.

#### Cross Examination.

Q. (By Mr. MACGUINEAS). You understand that the alternative prayer which we have requested in this case with respect to reducing the line haul rates at Norfolk also has as a part of it the setting up of tariffs which would impose a separate charge for the handling at the port? You appreciate our position on that?

A. I understand that that is the position. I question how the proposition could work out in actual practice for many reasons.

Q. You are not interested in any phase of this case except to oppose that alternative, is that correct?

A. We are opposed to the alternative prayer of the complaint, the proposal of segregation of the terminal from the line haul charges.

Q. Any of the other alternatives which may be prayed for you are not concerned with?

A. I do not recall any other alternatives other than that.

Q. For instance, one of the alternatives is for an order of the Commission to require the carriers to perform the services. You would not be concerned with that, would you?

A. I do not know except the question may arise after the war among the shippers as to whether they should be ac-

corded some of the considerations, but I can not anticipate that far ahead. At the moment we take no position with respect to that angle of the case.

Mr. MACGUINEAS. That is all.

The WITNESS. I offer my Exhibits 35 and 36 in evidence.

Exam. DISQUE. They will be received.

(Intervener's Exhibits 35 and 36, Witness Williams, received in evidence.)

(Witness excused.)

Mr. WAGNER. Let the record show that the Norfolk Port Traffic Commission, for which I speak, is opposed to the complaint and that portion of the complaint which seeks as an alternative the separation of the line haul and terminal charges on import, export, or any other traffic through Norfolk for the reasons set forth by the Witness Laux and Witness Seal.

Mr. MACGUINEAS. And again, Mr. Wagner, you are not concerned with the alternative involved?

Mr. WAGNER. We are not interested a particle.

Exam. DISQUE. Does any one else desire to be heard?

Mr. MACGUINEAS. Mr. Examiner, I have two witnesses in rebuttal and I think they can be handled quite briefly.

JOHN W. GILIUS, was sworn and testified as follows:

Direct Examination.

Q. (By Mr. MACGUINEAS). What is your name and occupation?

A. John W. Gilius. Captain, Transportation Corps.

346 Q. Captain Gilius, you are in the Transportation Corps assigned to the Hampton Roads Port of Embarkation area?

A. I am.

Q. Are you familiar with the mode of operation in connection with the handling of traffic at Army Piers 1 and 2?

A. I am.

Q. Do the carriers have a joint agent stationed at Army Base Piers 1 and 2?

A. They do. His name is Mr. Kimbrough. He maintains an office in the Army Base.

Q. His office is in the building back of the piers, is that correct?

A. It is back in the warehouse area, yes, sir.

Q. Did you bring with you a form of document which it is

the regular practice of the carriers joint agent to furnish the Army with respect to deliveries of cars to the port?

A. I have such a list here. It is used as an arrival notice and it is developed by Mr. Kimbrough or his assistants stationed at the Army Base.

Q. How often do you receive such notice from Mr. Kimbrough?

A. Two or three times during the day, one definitely early in the morning and others as arrivals come in during the day.

Mr. MACGUINEAS. I regret I have not had an opportunity to make copies of this, so I will not be able to put it in as an exhibit.

347 Mr. REYNOLDS. May we see it?

Mr. MACGUINEAS. Certainly.

Q. (By Mr. MACGUINEAS). Captain Gilius, when one of these forms, which is headed Norfolk-Portsmouth Belt Line Railroad Company, arrival of cars at Transport Trading and Terminal Corporation, is delivered to the transportation officer at the base, how much of it has been filled in?

A. All of the information which appears on the present form has been filled in by the railroad agent, including the rubber stamp "Export" opposite those cars which appear on this sheet.

Q. Then is it correct to say that when the joint agent delivers this daily form to you, it contains on it the following information: the initials of the carrier, the car number, a statement of the contents of the car, the name of the consignee, the initials of the line haul carrier, and either a blank space or in lieu thereof with respect to certain shipments the stamp "Export."

A. That is correct.

Mr. MACGUINEAS. That is all.

Mr. REYNOLDS. No questions.

Mr. COUSINS. No questions.

(Witness excused.)

JAMES HENRY DEVEREUX, JR., re-called, being previously sworn, testified further as follows.

Direct Examination.

348 Q. (By Mr. MACGUINEAS). Mr. Devereux, you are the person who testified yesterday?

A. I am.

Q. During the last two years since June 15, 1942, how

frequently have you personally been on the Army Base Piers 1 and 2?

A. I would say an average of three days a week.

Q. When you were on the piers did you ever see a Belt Line engine hauling cars on or off the pier tracks which run down the center of the piers?

A. I have.

Q. How frequently did you observe that occurrence?

A. It would be hard to state, but very frequently. I have been held up trying to cross from one side of the pier to the other due to a shift being made. I can definitely state at least twenty-five times, and probably many more I have seen that engine make such a shift.

Q. Will you explain specifically what you mean by making such a shift?

A. Either pushing into the pier shed a drill of fully loaded cars or pulling out of the pier shed a drill of cars which had been unloaded.

Q. Mr. Devereux, for the period prior to June 15, 1942—first, you testified that you have been engaged in the traffic business in the port since 1922?

349 A. That is correct.

Q. Over that span of years how frequently did you have occasion to actually go upon Army Base Piers 1 and 2?

A. It depended to a large extent on the amount of business which the companies I represented had to move through there. There might have been occasions where a period of two weeks or a month passed without my going down there, and then again I would go down four or five times a week for several weeks in succession. I would say during that previous period, an overall of twenty years, an average would be twice a week at least.

Q. During that earlier period, did you ever observe a Belt Line engine pushing cars or pulling them out from the tracks which run the length of those piers?

A. I have.

Q. And in general how frequently did you observe that occurrence?

A. It is a little difficult to answer that question in a period of twenty odd years, but I have seen that often enough to know that it must have been a common practice down there.

Q. Well, from your observations, was there any difference in the actual operation performed by those Belt Line loco-



motives, in pushing cars on and pulling them off the pier during the earlier period prior to June 15, 1942 and during the subsequent period when the Army Base took over those piers?

A. No difference whatsoever.

350 Mr. MACGUINEAS. That is all.

Mr. RICHARDS. No questions.

Mr. COUSINS. No questions.

(Witness excused.)

Exam. DISQUE. Does any one else desire to be heard?

(No response.)

Exam. DISQUE. Briefs are desired and briefs will be due on October 1st.

The hearing is closed.

(Whereupon, at 5:05 p. m., July 19, 1944, the hearing was closed.)

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EXHIBIT No. 1

WITNESS: KILPATRICK.

PAGE No. ....

INTERSTATE COMMERCE COMMISSION

Docket No. 29117

UNITED STATES OF AMERICA, COMPLAINANT

v.

ABERDEEN AND ROCKFISH RAILROAD CO., *et. al.*, DEFENDANTS

Exhibit

Showing correspondence between the railroads serving Norfolk, Va. and the Army with respect to matters involved in this complaint.

EXHIBIT No. ....  
 WITNESS: .....  
 PAGE No. 1

# WAR DEPARTMENT

## ARMY SERVICE FORCES

Office of the Chief of Transportation  
 Washington 25, D. C.

In Reply refer to SPTOT 551.2  
 (Norfolk & Portsmouth Belt  
 Line Railroad Company)

June 22, 1942.

Mr. W. A. Moore, Tariff Agent,  
 Norfolk and Portsmouth Belt Line Railroad Company,  
 Terminal Building,  
 Main and New Castle Streets,  
 Norfolk, Virginia.

Dear Sir:

Piers and other facilities at the port of Norfolk, Va. that now are or will be operated by the United States Government include Army Base Piers #1 and #2.

Until June 15, 1942 Pier #1 was leased from the Government by the Transport, Trading and Terminal Co., Norfolk, Va. Regulations governing charges payable to that company are set forth in items 100-A and 900-B, supplement 16 to Norfolk and Portsmouth Belt Line tariff 6-J, I. C. C. 105.

It is respectfully requested that all Government-operated facilities coming within the scope of said tariff be shown in a supplement without delay to the end that interested carriers will be informed of all revenues accruing to the Government.

Please inform this office of action taken.

For The Chief of Traffic Control Division:

Very truly yours,

E. C. R. LASHER,  
 Lt. Col., Q. M. C.,  
 Deputy Chief.  
 24-92500-40

EXHIBIT No. ....

WITNESS: .....

PAGE No. 2

NORFOLK AND PORTSMOUTH BELT LINE RAILROAD COMPANY  
Norfolk, Virginia

June 25, 1942

File: T-R 105-642

Mr. G. F. Potter, G. F. A., A. C. L. RR., Wilmington, N. C.  
Mr. T. Jefferson, Jr., G. F. A., C&O Rwy., Richmond, Va.  
Mr. C. H. Ware, G. F. A., N. S. RR., Norfolk, Va.  
Mr. W. A. Huse, A. F. T. M., N&W Rwy., Roanoke, Va.  
Mr. R. B. Cooke, G. F. A., Penn RR., Norfolk, Va.  
Mr. C. L. Senter, G. F. A., S. A. L. Rwy., Norfolk, Va.  
Mr. A. E. Hendee, G. F. A., Sou Rwy., Atlanta, Ga.  
Mr. J. F. Smith, G. F. A., Vgn. Rwy., Norfolk, Va.

Gentlemen:

Herewith copy of letter I received from the War Dept., Headquarters, Services of Supply, Office of the Chief of Transportation, Washington, D. C.

The Army Base piers and warehouses which were leased by the U. S. Maritime Commission to the Transport, Trading and Terminal Corp. has been cancelled, and the U. S. Government has taken over as of June 1st. The U. S. Navy has Pier #2 and warehouses and the War Department has Pier #1 and warehouses.

You will note in their letter that they have mentioned items 100-B and 900-B of Supplement No. 23 to Belt Line Tariff 6-J, ICC 105, requesting that we prepare a supplement with their name on the Title Page in lieu of the Transport, Trading and Terminal Corp.

Therefore, will you kindly check into this situation and advise me as to whether or not you are desirous of granting the government's request.

Yours very truly,

s/ H. CUNNINGHAM

Agent

HC:vc

cc Chief of Traffic Control Div.

War Department,

Headquarters Services of Supply

Office of Chief of Transportation

Washington, D. C.

SPTOT 551.2

(Norfolk & Portsmouth Belt  
Line Railroad Company)

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EXHIBIT No. ....

WITNESS: .....

PAGE No. 3

NORFOLK AND WESTERN RAILWAY COMPANY  
TRAFFIC DEPARTMENT

O. W. Cox  
General Traffic Manager

85244-A

Roanoke, Virginia—July 3, 1942, w.

Lt. Col. E. C. R. Lasher, Q. M. C.,  
Office of Chief of Transportation,  
Headquarters Services of Supply,  
War Department,  
Washington, D. C.

Dear Sir:

A copy has been furnished to me of your letter of June 22nd to Mr. M. A. Moore, Tariff Agent of Norfolk and Portsmouth Belt Line Railroad Company bearing reference SPTOT 551.2, in which you state that the Army Base Piers #1 and #2 at Norfolk, Virginia, heretofore leased to Transport, Trading & Terminal Corporation, are now or will be operated by the United States Government. In that letter you refer to "regulations governing charges payable" to that carrier as set out in items 100-A and 900-B of Supplement 16 to its tariff 6-J, I. C. C. 105, and you request "that all Government-operated facilities coming within the scope of said tariff be shown in a supplement without delay to the end that interested carriers will be informed of all revenues accruing to the Government."

That letter was referred to me because the tariff in question is applicable upon traffic which has moved or is to move in line-haul service over the Norfolk and Western Railway (the Belt Line being only a switching carrier), and also because some modifications may be required in certain tariffs published by the Norfolk and Western.

We also have received certain requests from the former tenant of those properties (Transport, Trading & Terminal Corporation) for continuance of certain arrangements we have heretofore had with it. The nature of those requests are in the attached copy of my letter of today to Mr. F. W. Anderson of that Company.

We desire to cooperate with the government in every possible way to effectuate suitable and satisfactory arrange-



ments. But we have so little information about what is proposed to be done with respect to those terminals, how they will be operated, by whom, and the freight which will be handled, that we are encountering much difficulty and uncertainty in determining just what must or should be done.

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EXHIBIT No. ....

WITNESS. ....

PAGE No. 4

To aid us in reaching a conclusion, would it be possible for you to give me the following information:

1. By whom is it proposed that the terminal properties will be operated—The United States, the Navy Department, the War Department, the Army Transport Service, some other governmental agency, or some contractor such as the Lincoln Tidewater Terminals which operates other terminals at Norfolk now controlled by the Government.

2. By what designation should those terminals be shown in our tariffs?

3. To whom should the tariff provide for payment of wharfage and handling allowances?

4. Is the terminal to be used exclusively for Government traffic or will commercial freight also be handled?

If only Government freight is handled, it seems to us that it would be proper to provide for allowances for wharfage and handling in all instances where the rates are so published as to apply to or from shipside, *i. e.*, where they include wharfage and handling. In instances where the wharfage and handling charges are in addition to the line-haul rates, it is my understanding that the Government or its agency will perform those services itself, there will be no charges therefor by the carrier, and of course no allowance therefor would be made. If, on the other hand, other traffic is also to be handled, it may be necessary to work out some arrangement for the collection of wharfage and handling charges when they are not included in the line-haul rates and to compensate whoever performs those services by providing an allowance.

I shall appreciate it if you can supply this information and we shall then be able to devise a plan to accomplish what we desire.

Very truly yours,

s/ Cox.

General Traffic Manager.

cc—Col. John R. Kilpatrick,  
C. O.,  
Newport News, Va.

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EXHIBIT No. ....  
WITNESS: .....  
PAGE No. 3

**WAR DEPARTMENT  
ARMY SERVICE FORCES**

Office of the Chief of Transportation  
Washington 25, D. C.

In Reply Refer to SPTOT 548.3  
(Hampton Roads)

August 17, 1942.

Mr. O. W. Cox, General Traffic Mgr.,  
Norfolk and Western Ry. Co.,  
Roanoke, Virginia.

Dear Sir:

Reference is made to your letter of July 3, file 85244-A, regarding Army Base Piers No. 1 and 2 at Norfolk, Va.

The terminal properties will be operated and controlled by the War Department. Use of the facilities by the other armed forces or by private concerns will be by the express permission of the War Department.

The tariff should designate these piers as "War Department Army Base Piers No. 1 and 2, Norfolk, Virginia" and payment made to the "Treasurer of the United States, through the Commanding Officer, Hampton Roads Port of Embarkation, Newport News, Virginia".

It is intended to use the terminal facilities for Government traffic only. However circumstances may require the handling of commercial freight and in either instance the War Department or its agency will perform all services.

It is requested that provision be made at once for those allowances to the Government and consideration given to making them retroactive to June 15, 1942.

For the Chief of Traffic Control Division:

Very truly yours,

H. M. TOURVILLE,  
Lt. Col., Transp. Corps,  
Chief, Freight Branch.

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EXHIBIT No. ....  
 WITNESS: .....  
 PAGE No. 6

WAR DEPARTMENT  
 ARMY SERVICE FORCES

Office of the Chief of Transportation  
 Washington 25, D. C.

In reply refer to SPOT 548.3  
 (Norfolk, Va.)

October 14, 1942.

Mr. O. W. Cox, General Traffic Manager,  
 Norfolk and Western Railway Co.,  
 Roanoke, Virginia.

Subject: Wharfage and Handling Charges at Norfolk, Va.  
 Dear Sir:

Referring further to your letter of July 3, 1942, file 8524-A, covering allowance for wharfage and handling at Army Base Piers No. 1 and 2 at Norfolk, Va.

N & W Tariff G. F. No. 15-D has been amended in supplement 35 showing Army Base Piers No. 1 and 2 in lieu of Transport, Trading and Terminal Corp., but Section 6 of N & W Tariff G. F. No. 23-E has not been amended to provide for allowance to the Government of wharfage and handling charges at these piers, as was formerly accorded to the Transport, Trading and Terminal Corp.

It is, therefore, requested that Section 6 of N & W Tariff G. F. No. 23-E be amended to authorize allowance to the United States Government of one (1) cent per 100 pounds for wharfage and three (3) cents per 100 pounds for handling on freight handled over Army Base Piers No. 1 and 2.

Where rates are published to shipside, and delivery to the vessel is effected over a dock or wharf owned or operated by a railroad, the wharfage and handling charges are absorbed, and if delivery to the vessel is made over a dock or wharf owned or operated by a contractor or other commercial agency, the wharfage and handling charges are paid to such agency as an "allowance", and the lawfully published tariffs so provide.

EXHIBIT No. ....

WITNESS: .....

PAGE No. 7

In this instance, Army Base Piers No. 1 and 2 are the property of the Government and are operated by the War Department for its own exclusive use. The existence and operation of such Government facilities at North Atlantic Ports is clearly recognized by the specifically published application of Export rates in Agent B. T. Jones (Tariff 490-B and Agent W. S. Curlett's Tariff 107-B, which state that Export rates will apply on shipments "handled through United States Army Bases or delivered to United States Government vessels docked thereat".

Therefore, since the railroads absorb or make allowance for wharfage and handling charges on shipments handled over railroad or commercially owned or operated docks and wharves and also specifically provide for the application of Export rates to shipside at United States Army Bases, the allowance for such wharfage and handling charges should be made to the War Department on traffic handled over Army Base Piers No. 1 and 2 at Norfolk, Virginia. It is requested that Section 22 Quotation be issued, applying these allowances from June 15, 1942, the date of activation of the Hampton Roads Port of Embarkation.

Your early and favorable consideration of this proposal will be greatly appreciated.

For The Chief of Traffic Control Division:

Very truly yours,

R. M. BOYD,  
Major, Transp. Corps,  
*Chief, Freight Branch.*



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EXHIBIT No. ....

WITNESS: .....

PAGE No. 8

WAR DEPARTMENT  
ARMY SERVICE FORCES

Office of the Chief of Transportation  
Washington 25, D. C.

In reply refer to SPTOT 548.3  
(Norfolk, Va.)—FR

December 1, 1942.

Mr. A. F. Cleveland, Vice President,  
Association of American Railroads,  
Washington, D. C.

Dear Sir:

This office has had considerable correspondence with individual carriers serving the Hampton Roads Ports regarding allowances to the Government of wharfage and handling charges on traffic loaded into vessels across the Army Ammunition Pier at Newport News, Va. and Army Base Piers 1 and 2 at Norfolk, Va.

The Army has negotiated a contract with the Chesapeake and Ohio Ry. permitting the handling of War Department traffic over the railroad owned merchandise piers at Newport News, Va., and allowances are made to the Government for wharfage and handling of such traffic.

Prior to June 15, 1942, Army Base Piers 1 and 2 at Norfolk, Va. were leased by the Government to Transport, Trading and Terminal Corp., and carriers provided for the payment of allowances to this operator for wharfage and handling charges over these piers.

When the Government canceled this lease and took over the use and operation of these piers as War Department facilities, the terminal tariffs of the Norfolk carriers were not amended to authorize payment to the Government of the allowances formerly made to the civilian operator of these piers.

Where rates are published to shipside, and delivery to the vessel is effected over a dock or wharf owned or operated by a railroad, the wharfage and handling charges are absorbed, and if delivery to the vessel is made over a dock or wharf owned or operated by a contractor or other com-

mercial agency, the wharfage and handling charges are paid to such agency as an "allowance", and the lawfully published tariffs so provide.

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EXHIBIT No. ....

WITNESS: ? .....

PAGE No. 9

In this instance, Army Base Piers No. 1 and 2 are the property of the Government and are now operated by the War Department for its own exclusive use. The existence and operation of such Government facilities at North Atlantic Ports is clearly recognized by the specifically published application of Export rates in Agent B. T. Jones' Tariff 490-B and Agent W. S. Curlett's Tariff 107-B, which state that Export rates will apply on shipments "handled through United States Army Bases or delivered to United States Government vessels docked thereat."

Therefore, since the railroads absorb or make allowance for wharfage and handling charges on shipments handled over railroad or commercially owned or operated docks and wharves and also specifically provide for the application of Export rates to shipside at United States Army Bases the allowance for such wharfage and handling charges should be made to the War Department on traffic handled over Army Base Piers No. 1 and 2 at Norfolk, Virginia. It is requested that Section 22 Quotation be issued, applying these allowances from June 15, 1942, the date of activation of the Hampton Roads Port of Embarkation.

As this matter has been the subject of correspondence for quite a while, this office will greatly appreciate any action which can be taken to bring this matter to a conclusion.

For the Chief of Traffic Control Division:

Very truly yours,

R. M. Boyd,  
Major, Transp. Corps,  
Chief, Freight Branch.

EXHIBIT No. ....

WITNESS: .....

PAGE No. 10

## ASSOCIATION OF AMERICAN RAILROADS

## TRAFFIC DEPARTMENT

Transportation Building  
Washington, D. C.A. F. CLEVELAND  
Vice President

R. N. NASH

W. J. KELLY  
Assistants

February 16, 1943.

1-127-4

Wharfage and Handling Charges on War Department  
Export Freight.Chief of Transportation,  
War Department  
Washington, D. C.Attention: R. M. Boyd, Major, Transp. Corps,  
Chief, Freight Branch.

Gentlemen:

Referring to your letter of December 1, 1942, file SPTOT 548.3 (Norfolk, Va.)—FR, in regard to the terminal situation at Newport News and Norfolk, Va.; also your letter of January 19 tracing for a reply.

This subject has been considered by the Chief Traffic Officers, by whom it was referred to the traffic executives of the Eastern and Southern groups. It has since been given careful consideration by the Eastern railroads, who recommend that where the control or operation of piers or other facilities is taken over by the government for its own use or they are operated under contract with the government and under government supervision, such facilities or piers should be treated the same as piers operated or controlled by the owners of the property transported and loading and unloading should not be performed by the carriers, nor any allowance made in lieu thereof.

The Southern lines have just advised me that their Executive Committee gave the subject full consideration and they recommend that no allowance should be made to the government for performing loading or unloading services

incident to the receipt or delivery of import and export freight at the piers or other port facilities under the exclusive jurisdiction of the government.

I am fully convinced that the action taken was proper and cannot believe that you will strenuously urge doing that which will be very embarrassing in other directions and at other ports.

Very truly yours,

s/- A. F. CLEVELAND,

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EXHIBIT NO. ....

WITNESS: .....

PAGE NO. 11

# HAMPTON ROADS PORT OF EMBARKATION

SPTAK 548.3—TO

May 1st, 1943.

Mr. Randolph B. Cooke  
General Freight Agent  
Pennsylvania Railroad  
Norfolk, Virginia

Dear Sir:

The Hampton Roads Port of Embarkation was activated June 15, 1942. At that time, the railroads serving Norfolk were requested, thru the Belt Line, to authorize amendment of the Belt Line Freight Tariff No. 6 J, ICC 105, to allow the War Department all wharfage and handling charges that formerly accrued to the Transport Trading and Terminal Corporation at the Army Base, Norfolk, Virginia.

The Belt Line Tariff has not been amended. While the refusal of certain carriers to allow the War Department such wharfage and handling charges is not a matter of port record, it is evident that the Belt Line was not authorized to publish the desired amendment.

It is believed that the War Department is entitled to wharfage and handling charges on all cargo moving over pier 1 and pier 2 of the Army Base. It is intended that the entire matter shall be placed before the Interstate Commerce Commission at the earliest possible moment. A prerequisite to the action appears to be the request from this port that the various carriers perform the services or make an allowance in lieu. In line with instructions from the Chief of Transportation, it is requested that the PRR perform the terminal services included in the line haul freight



rate, or make allowances in lieu thereof on car NYC 57535, containing vehicles moving on GBL WQ 7346467 from South Schenectady, N. Y., to Norfolk, Virginia, via NYC-PRR-Belt Line delivery to Norfolk, Virginia, Army Base. Cars on hand at the Army Base include 133 other cars routed to Norfolk via PRR, which moved on freight rates that included terminal charges. It is requested that such terminal services be performed by the PRR, or allowances made as provided in the various terminal tariffs.

The cargo contained in these cars is to be shipped immediately. Please favor this office with an early reply.

Yours very truly,

J. R. KILPATRICK  
Brigadier General, U. S. Army  
Commanding.

EXHIBIT No. ....  
WITNESS: ....  
PAGE No. 12

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THE PENNSYLVANIA RAILROAD  
TRAFFIC DEPT.

NORFOLK, VIRGINIA.  
May 4, 1943  
File 216-H-1

Brigadier General J. R. Kilpatrick,  
Hampton Roads Port of Embarkation,  
Newport News, Virginia.

Dear Sir:

Your letter of May 1st, File SPTAK-548. 3-TO referring to Belt Line Freight Tariff No. 6 J, I. C. C. 105.

My understanding is that the matter of allowances for wharfage and handling to the War Department is before the executives of all the transportation companies and I can give you no answer on this point.

Our tariffs are not so published as to permit us at the present time to absorb wharfage and handling charges at the Army Base terminals. Therefore, we will be unable to grant your request to either absorb wharfage and handling charges on NYC 57535 and 133 other cars or perform the terminal service, which is covered by the Consolidated Freight Classification, until such time as the tariffs are

corrected permitting the Pennsylvania Railroad to absorb the charges referred to.

Yours very truly,

/s/ R. B. COOK

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EXHIBIT NO. ....

WITNESS: .....

PAGE NO. 13

# HAMPTON ROADS PORT OF EMBARKATION

SPTAK 548. 3-TD

May 22, 1943.

Mr. G. F. Potter, GFA, A. C. L. RR, Wilmington, N. C.

Mr. T. Jefferson, Jr. GFA, C & O Rwy., Richmond, Va.

Mr. C. H. Ware, GFA, N. S. RR., Norfolk, Va.

Mr. W. A. Huse, AFTM, N & W Rwy., Roanoke, Va.

Mr. R. B. Cooke, GFA, Penn. R. R., Norfolk, Va.

Mr. C. L. Seitter, GFA, S. A. L. Rwy., Norfolk, Va.

Mr. A. E. Hendee, GFA, Sou. Rwy., Atlanta, Ga.

Mr. J. F. Smith, GFA, Vgn. Rwy., Norfolk, Va.

Gentlemen:

Despite the fact that line haul export freight rates applicable to Norfolk, Virginia, from a large part of the United States include car unloading service, such service is not being performed by railroad labor, or at railroad expense at the Army Base, Norfolk, Virginia.

It is requested that the Carriers meet their legal obligation by performing unloading service, when line haul rates cover such service. Arrangements should be made by all the Norfolk lines, individually or jointly, to unload such traffic consigned to Hampton Roads Port of Embarkation, Army Base, Norfolk, Virginia, as a permanent operation.

Early advice as to your conclusion will be appreciated.

Very truly yours,

J. R. KILPATRICK

Brigadier General, U. S. Army

*Commanding*

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EXHIBIT No. ....  
 WITNESS: .....  
 PAGE No. 14

THE VIRGINIAN RAILWAY COMPANY  
 TERMINAL BUILDING  
 Norfolk, Va.

May 24, 1943:  
 File No. C-5538-B

H. C. MITCHELL  
 Traffic Manager

A. F. SCHAFHIRT  
 Asst. Freight  
 Traffic Manager

J. F. SMITH  
 General Freight Agent

Terminal allowances to the United States Government  
 on traffic handled through the Army Base at Norfolk,  
 Va.

Mr. J. R. Kilpatrick, Brigadier General, U. S. Army,  
 Commanding Officer,  
 Hampton Roads Port of Embarkation,  
 Post Office Building,  
 Newport News, Va.

Dear Sir:

Referring to your joint letter of May 22, file SPTAK-548.  
 TD:

This question received the attention of Chief Traffic  
 Officers of the Eastern and Southern Lines recently and Mr.  
 R. M. Boyd, Major, Transportation Corps, Chief, Freight  
 Branch, was advised, under date of February 15, that it was  
 decided that where the control of operation of piers or  
 other facilities is taken over by the Government for its own  
 use or they are operated under contract with the Govern-  
 ment and under Government supervision, such facilities  
 or piers should be treated the same as piers operated or  
 controlled by owners of the property transported and load-  
 ing and unloading could not be performed by the carriers,  
 nor any allowance made in lieu thereof.

Yours very truly,

S J. F. SMITH  
 General Freight Agent.

CC: Mr. G. F. Potter, GFA, ACL RR, Wilmington, N. C.  
 Mr. T. Jefferson, Jr., GFA, C&O Ry., Richmond, Va.  
 249-5457-Z  
 Mr. C. H. Ware, TM, NS Ry., Norfolk, Va.  
 Mr. W. A. Huse, AFTM, N&W Ry., Roanoke, Va.  
 Mr. R. B. Cooke, GFA, PRR, Norfolk, Va.  
 Mr. C. L. Senter, GFA, SAL Ry., Norfolk, Va.  
 Mr. C. L. Batenian, GFA, Sou. Ry., Atlanta, Ga.

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EXHIBIT No. ....

WITNESS: .....

PAGE No. 15

SEABOARD AIR LINE RAILWAY  
 FREIGHT TRAFFIC DEPARTMENT

Norfolk, Va., May 26, 1943

File NS 12565-K

Mr. J. R. Kilpatrick, Brigadier General, U. S. Army  
 Commanding  
 Hampton Roads Port of Embarkation  
 Port Office Building  
 Newport News, Va.

Dear Sir:

I wish to acknowledge receipt of your letter May 22nd,  
 reference SPTAK 548. 2-TD.

The matter covered by your letter has been considered  
 previously by the executives of Eastern and Southern  
 carriers, and in connection therewith, I am sending you  
 herewith copy of letter Mr. A. F. Cleveland, Vice President,  
 Association of American Railroads, wrote Chief of Trans-  
 portation, War Department, Washington, D. C. on Feb-  
 ruary 15, 1943 which outlines the position of the Eastern  
 and Southern carriers.

S/ C. L. SENTER

*General Freight Agent.*

fbp/ah

cc - Mr. G. F. Potter, GFA, ACL RR, Wilmington, N. C.  
 Mr. T. Jefferson, Jr., GFA, C&O Ry., Richmond, Va.  
 Mr. C. H. Ware, GFA, NS RR, Norfolk, Va.  
 Mr. W. A. Huse, AFTM, N&W Ry., Roanoke, Va.  
 Mr. R. B. Cooke, GFA, Penn RR, Norfolk, Va.  
 Mr. A. E. Hendee, GFA, Sou. Ry., Atlanta, Ga.  
 Mr. J. F. Smith, GFA, Vgn. Ry., Norfolk, Va.



EXHIBIT No. ....

WITNESS: .....

PAGE No. 16

NORFOLK AND WESTERN RAILWAY COMPANY  
FREIGHT TRAFFIC DEPARTMENT

85704-C

Roanoke, Virginia,

May 31, 1943.

Brig. Gen. J. R. Kilpatrick,  
U. S. Army Commanding,  
Hampton Roads Port of Embarkation,  
Newport News, Va.

Dear Sir:

Unloading at the Army Base at carriers' expense of  
export government freight.

— 0 —

Referring to your letter of May 22nd, file SPTAK 548. 3-TD, in regard to the rail carriers unloading at their expense carload freight at the Army Base, Norfolk, for export when moving on road-haul rates that apply to shipside:

This is a matter that has previously been given extensive consideration at the hands of the carriers, not only as to the carriers unloading the freight at their expense, but also making an allowance to the Army authorities for the performance of that service.

The status of the Army Base, Norfolk, is that of a privately operated terminal at which there is handled only freight of the owners, and it is not the general practice of the railroads to unload freight at their expense at privately operated facilities, nor make an allowance in lieu of performance of that service.

In the consideration this matter has been given at the hands of the carriers, Norfolk was specifically dealt with as well as like facilities at other points. It is not felt we can comply with your request in this matter for the reasons given.

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EXHIBIT No. ....

WITNESS: .....

PAGE No. 17

N & W Ry. Co. 85704-C  
 Ltr. to Brig. Gen. J. R.  
 Kilpatrick, Hampton  
 Roads Por E, 5/31/43

In this connection previous handling was of a National character, and I am enclosing herewith copy of letter of February 16th, 1942, addressed to Chief of Transportation, War Department, Washington, D. C., Attention Major Boyd, Transp. Corps, by Mr. A. F. Cleveland, Vice-President, Association of American Railroads, which was for account of all roads, and fully setting forth the reasons for action taken.

Yours very truly,

S/ W. A. HUSE

*Asst. Freight Traffic Manager.*

cc-

Mr. G. F. Potter, GFA, ACL, Wilmington, N. C.  
 Mr. Thos. Jefferson, Jr., GFA, C&O, Richmond, Va.  
 Mr. C. H. Ware, TM, NS Ry., Norfolk, Va.  
 Mr. R. B. Cooke, GFA, PRR, Norfolk, Va.  
 Mr. C. L. Senter, GFA, SAL, Norfolk, Va.  
 Mr. C. L. Bateman, GFA, Sou Ry., Atlanta, Ga.  
 Mr. J. F. Smith, GFA, Vgn. Ry., Norfolk, Va.

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EXHIBIT No. ....

WITNESS: .....

PAGE No. 18

# NORFOLK SOUTHERN RAILWAY COMPANY

C. H. WARE  
 Traffic Manager

NORFOLK, VA. June 7th, 1943. m.  
 File No. 27500-134-F.

ALLOWANCES: For Wharfage and Handling Charges on  
 War Department Export Freight.

Brig. Gen. J. R. Kilpatrick,  
 U. S. Army, Commanding,  
 Hampton Roads Port of Embarkation,  
 Newport News, Va.

Dear Sir:

Referring to your joint letter of May 22nd, file SPTAK  
 548. 3 TD, in regard to the rail carriers unloading carload  
 freight at the Army Base, Norfolk:

This subject has had previous consideration by the Chief Traffic Officers of the Eastern and Southern carriers, and R. M. Boyd, Major, Transp. Corps, Chief, Freight Branch, was advised on February 16th that where the control or operation of piers or other facilities is taken over by the Government for its own use, or operated under contract with the Government and under Government supervision, such facilities or piers should be treated the same as piers operated or controlled by the owners of the property transported and loading or unloading should not be performed by the carriers, nor any allowance made in lieu thereof.

Yours very truly,

S/ C. H. WARE

*Traffic Manager.*

(14)

cc- Mr. G. F. Potter, GFA, ACL RR., Wilmington, N. C. Fam-12454.

Mr. Thos. Jefferson, Jr., GFA, C&O, Richmond, Va. 249-5457-J.

Mr. W. A. Huse, AFTM, N&W, Roanoke, Va. 85704-C.

Mr. R. B. Cooke, GFA, PRR, Norfolk, Va.

Mr. C. L. Senter, GFA, SAL Ry., Norfolk, Va. NS 12565-K

Mr. C. L. Bateman, GFA, Sou. Ry., Atlanta, Ga. 4-3052.

Mr. J. F. Smith, GFA, Vgn. Ry., Norfolk, Va. C-5538-B.

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EXHIBIT No. ....

WITNESS: .....

PAGE No. 19

THE PENNSYLVANIA RAILROAD

TRAFFIC DEPARTMENT  
NORFOLK, VA.

June 8, 1943.

File 216-H-1.

Brig. Gen. J. R. Kilpatrick, Commanding Officer,  
Hampton Roads Port of Embarkation,  
Newport News, Virginia.

Dear Sir:

Replying to your letter of May 22d, file SPTAK 548. 3-TD, addressed to representatives of the rail lines serving the port of Hampton Roads, regarding unloading of freight at the Army Base, Norfolk.

I am enclosing copy of letter, written February 16, 1943, by Mr. A. F. Cleveland, Vice President, Association of

American Railroads, to the Chief of Transportation, War Department. You appreciate that we shall have to be governed by the instructions contained in that letter.

Yours very truly,

S/ RANDOLPH B. COOKE

RBC:NE

ccy Mr. G. F. Potter, G.F.A., A.C.L. R.R., Wilmington, N. C.

Mr. T. Jefferson, Jr., G.F.A., C&O Ry., Richmond, Va.

Mr. C. H. Ware, G.F.A., N.S. R.R., Norfolk, Va.

Mr. W. A. Huse, A.F.T.M., N&W Ry., Roanoke, Va.

Mr. C. L. Senter, G.F.A., S.A.L. Ry., Norfolk, Va.

Mr. C. L. Bateman, G.F.A., Southern Ry., Atlanta, Ga.

Mr. J. F. Smith, G.F.A., Virginian Ry., Norfolk, Va.

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EXHIBIT No. ....

WITNESS: .....

PAGE No. 20

ATLANTIC COAST LINE RAILROAD COMPANY

FREIGHT TRAFFIC DEPARTMENT

Wilmington, N. C.

June 10, 1943.

Fam-12454

Cy-5108

Handling Services at Norfolk, Va., in Connection with Export Rates Having Shippers Application.

Brig. Gen. J. R. Kilpatrick,

U. S. Army, War Department,

Hampton Roads Port of Embarkation,

Newport News, Va.

Dear General Kilpatrick:

On May 27th I acknowledged receipt of your joint letter of May 22nd, file SPTAK 548. 3-TD, and stated that, after looking into the matter, I would write you more definitely.

Since that time I have received copies of replies from various of the other roads addressed by you, in which they have referred you to the handling of this matter through Vice-President Cleveland of the Association of American Railroads. At the time I acknowledged receipt of your letter on May 27th, I had overlooked the handling mentioned by the other roads.

Yours very truly,

/s/ G. F. POTTER

General Freight Agent.



Copies to:

Mr. T. Jefferson, Jr., GFA, C&O Ry, Richmond, Va.—File 249-5457-J.

Mr. C. H. Ware, TM, NS Ry, Norfolk, Va.

Mr. W. A. Huse, AFTM, N&W Ry, Roanoke, Va.—File 85704-C.

Mr. R. B. Cooke, DFA, Penn. RR, Norfolk, Va.—File 216-H-1.

Mr. C. L. Senter, GFA, SAL Ry, Norfolk, Va.—File NS-12565-K.

Mr. C. L. Bateman, GFA, Sou Ry, Atlanta, Ga.—File 4-3052.

Mr. J. F. Smith, GFA, Vgn Ry, Norfolk, Va.—File C-5538-B.

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EXHIBIT No. ....

WITNESS .....

PAGE No. 21

**SOUTHERN RAILWAY SYSTEM**  
**FREIGHT TRAFFIC DEPARTMENT**

ATLANTA, GA. July 7, 1943-S  
4-3052

Brig.-Gen. J. R. Kilpatrick,  
U. S. Army, War Department,  
Hampton Roads Port of Embarkation,  
Newport News, Virginia.

Dear Sir:

With further reference to your joint letter May 22, file SPTAK 548: 3-TD, dealing with the service of unloading export traffic consigned to Hampton Roads Port of Embarkation, Army Base, Norfolk, Va.:

You are informed of record previously made by Southern Lines Executive Committee that no allowance should be made to the Government for performing loading or unloading services incident to the receipt or delivery of import and export freight at the piers or other port facilities under the exclusive jurisdiction of the Government. This conclusion is based on the fact that the facilities in question should properly be treated the same as piers operated or controlled by the owners of the property transported in which event the carriers do not perform loading or unloading or make an allowance in lieu thereof.

As the terminal tariffs at Norfolk do not provide that carriers will unload traffic consigned to the Army Base, and in view of the previous consideration given the subject,

we are not in a position to comply with your request of May 22.

Yours truly,

C. L. BATEMAN

General Freight Agent.

ACH

Mr. G. F. Potter, G.F.A., A.C.L. RR., Wilmington, N. C. (Fam-12454)  
 Mr. T. Jefferson, Jr., G.F.A., C. & O. Ry., Richmond, Va. (249-5457-J)  
 Mr. C. H. Ware, T.M., N.S. Ry., Norfolk, Va. (29500-134-F)  
 Mr. W. A. Huse, A.F.T.M., N. & W. Ry., Roanoke, Va. (85704-C)  
 Mr. R. B. Cooke, D.F.A., Pa. RR., Norfolk, Va. (216-H-1)  
 Mr. C. L. Senter, G.F.A., S.A.L. Ry., Norfolk, Va. (NS-12565-K)  
 Mr. J. F. Smith, G.F.A., Vgn. Ry., Norfolk, Va. (C-5538-B)

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EXHIBIT NO. ....

WITNESS: .....

PAGE No. 22

ARMY SERVICE FORCES  
 HAMPTON ROADS PORT OF EMBARKATION  
 Newport News, Va.

SPTAK 548. 3-TD

9 November 1943

Mr. R. J. Doss, Vice President,  
 Atlantic Coast Line Railroad Company,  
 Wilmington, North Carolina.

Mr. H. L. White, Jr., Vice Pres. & Gen. Mgr.,  
 Norfolk & Portsmouth Belt Line Railroad,  
 Terminal Building,  
 Norfolk, Virginia.

Mr. George Dunglinson, Jr.,  
 Vice Pres., in Charge of Traffic,  
 Norfolk and Western Railway,  
 Roanoke 17, Virginia.

Mr. J. F. Dalton, Vice Pres.—Traffic,  
 Norfolk, Southern Railway Company,  
 Norfolk, Virginia.

Mr. Walter S. Franklin,  
Vice Pres., in Charge of Traffic,  
Pennsylvania Railroad,  
Broad Street Station Bldg.,  
Philadelphia, Pa.

Mr. George B. Rice,  
Chief Freight Traffic Officer,  
Seaboard Railway,  
S. A. L. Bldg.,  
Norfolk 10, Virginia.

Mr. E. R. Oliver, Vice Pres.—Traffic,  
Southern Railway System,  
Washington, D. C.

Mr. T. E. McAndrews, Vice Pres.—Traffic,  
The Virginian Railway Company,  
Norfolk 10, Virginia.

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EXHIBIT NO. ....  
WITNESS: .....  
PAGE NO. 23

SPTA 548. 3-TD 9 November 1943

Gentlemen:

Reference is made to negotiations which have been carried on with the carriers serving Norfolk, Virginia, since June 1942, with respect to the wharfage and handling charges situation at Army Base Piers Nos. 1 and 2 at Norfolk, on water-borne traffic originating in or destined to so-called absorption territory. The carriers have repeatedly declined to furnish the services or make an allowance in lieu thereof to the War Department for furnishing the wharfage facilities and performing the handling services. It would appear that the only recourse left open to the War Department is that of filing a formal complaint with the Interstate Commerce Commission unless the carriers will recede from their previously announced position of declining to render the services or make an allowance in lieu thereof.

In order to preclude any possibility of misunderstanding on the part of any interested party, the following demand is being made upon each of the line-haul carriers serving Norfolk and also upon the Norfolk and Portsmouth Belt Line Railroad.

Demand is hereby made that each of the railroads to whom this letter is addressed, immediately take the neces-

sary steps to fulfill completely its undertaking under line-haul "shipside" rates on water-borne traffic moving from and to so-called absorption territory (as defined in Norfolk terminal tariffs) to and from Norfolk, Virginia, and consigned to or shipped by the Hampton Roads Port of Embarkation. This traffic is now moving over Army Base Piers Nos. 1 and 2 and the Army, due to continued refusal of the railroads to perform lawful duties, is now perforce furnishing the wharfage facilities and performing the handling services which are included in the "holding out" by the railroads under their "shipside" line-haul rates, and is receiving no allowance therefor. The Army is paying the railroads for wharfage and handling. They are not "performing"—hence the demand. In this connection, your attention is directed to Section 6 (8) of the Interstate Commerce Act which reads in part as follows:

"That in time of war or threatened war . . . carriers shall adopt every means within their control to facilitate and expedite the military traffic."

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EXHIBIT No. ....

WITNESS:

PAGE No. 24

The War Department is now preparing a formal complaint to be filed with the Interstate Commerce Commission and in view of which if there is any change in the position of the carriers, this office should be advised immediately.

Very truly yours,

J. R. KILPATRICK  
Brigadier General, U. S. Army  
*Commanding*



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EXHIBIT No. ....  
WITNESS .....  
PAGE No. 25.

THE VIRGINIAN RAILWAY COMPANY  
TERMINAL BUILDING  
Norfolk 10, Va.

November 16, 1943  
File No. C-5538-A

T. E. McANDREWS  
Vice President

Brigadier General J. R. Kilpatrick, USA,  
Hampton Roads Port of Embarkation,  
Newport News, Virginia.

Dear General Kilpatrick:

I wish to acknowledge receipt of your letter of November 9, file SPTAK 548. 3-TD.

I will study this situation and advise you concerning it at a later date.

Yours very truly,

/s/ T. E. McANDREWS

TEM:b

CC Mr R J Doss, VP, ACL RR., Wilmington, N. C.  
Mr. H L White Jr., VP&GM, N&PBL RR., Norfolk, Va.  
Mr Geo. Dunglinson, Jr, VP, N&W Ry., Roanoke Va.  
Mr J F Dalton, VP, NS Ry., Norfolk Va  
Mr Walter S Franklin, VP, PRR., Philadelphia, Pa.  
Mr Geo. B. Rice, CFTO., SAL Ry., Norfolk, Va  
Mr E R Oliver, VP, Southern Ry., Washington, D. C.

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EXHIBIT No. ....  
WITNESS .....  
PAGE No. 26

NORFOLK SOUTHERN RAILWAY COMPANY

J. F. DALTON  
Vice President—Traffic

Zone 10  
Norfolk, Va. November 16, 1943  
File No. 27560-134-A

Brig. Gen. J. R. Kilpatrick  
Hampton Roads Port of Embarkation  
Newport News, Va.

My dear General:

I beg to acknowledge receipt of your letter of November 9th, file SPTAK 548. 3-TD, and to say that at the writing no

definite conclusion different from that previously announced is made. However, your letter will receive further consideration and I shall write you again with respect thereto.

Yours very truly,

/s/ J. F. DALTON  
Vice President—Traffic

13  
cc: Messrs. R. J. Doss  
H. L. White, Jr.  
Geo. Duglinson, Jr.  
W. S. Franklin  
G. B. Rice  
E. R. Oliver  
T. E. McAndrews

EXHIBIT No. ....  
WITNESS: .....  
PAGE No. 27

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# SEABOARD AIR LINE RAILWAY

L. R. Powell, Jr. and Henry W. Anderson, Receivers  
TRAFFIC DEPARTMENT

G. B. RICE,  
Chief Freight Traffic Officer  
W. A. MARSHALL,  
W. J. HOCK,  
Assistants

Norfolk, Va., November 19th, 1943. c  
63593

General J. R. Kilpatrick,  
Hampton Roads Port of Embarkation,  
Newport News, Va.

Dear General Kilpatrick:

I have received your letter of November 9th addressed jointly to and others, file SPTAK 548. 3-TD, with reference to wharfage and handling at Army Base Piers Nos. 1 and 2 at Norfolk.

The matter referred to is now receiving consideration and I will write you again just as promptly as possible.

Yours very truly,

/s/ G. B. RICE  
Chief Freight Traffic Officer.

## Copies to:

Mr. R. J. Doss, VP, ACL RR, Wilmington, N. C.  
 Mr. H. L. White, Jr., VP&GM, N&P BL RR, Norfolk, Va.  
 Mr. Geo. Dunglinson, Jr., VP, N&W Ry., Roanoke, Va.  
 Mr. J. F. Dalton, VP, NS Ry., Norfolk, Va.  
 Mr. W. S. Franklin, VP, Penna RR, Philadelphia, Pa.  
 Mr. E. R. Oliver, VP, Southern Ry., Washington, D. C.  
 Mr. T. E. McAndrews, VP, Virginian Ry., Norfolk, Va.

EXHIBIT No. ....

WITNESS: .....

PAGE No. 28

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## SUBJECT:

NORFOLK AND WESTERN RAILWAY COMPANY

George Dunglinson, Jr.

Vice President in Charge of Traffic

In Your Reply Refer to File No. 106-3

Roanoke 17, Va., November 29th, 1943, t

General J. R. Kilpatrick,

Hampton Roads Port of Embarkation,

Newport News, Virginia.

Dear General Kilpatrick:

I duly received your joint letter of November 9th, file SPTAK 548.3-TD, to the Chief Traffic Officers of the Port of Norfolk regarding allowances on Army traffic handled at Army Base Piers Nos. 1 and 2.

This matter is now receiving our attention and you will be more fully advised as quickly as possible.

Yours very truly,

✓s/ GEORGE DUNGLINSON, JR.  
 Vice President.

cys: Messrs. R. J. Doss  
 H. L. White, Jr.  
 J. F. Dalton  
 W. S. Franklin  
 G. B. Rice  
 E. R. Oliver  
 T. E. McAndrews.

EXHIBIT NO. ....  
 WITNESS: .....  
 PAGE NO. 29

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THE PENNSYLVANIA RAILROAD COMPANY  
 General Office

WALTER S. FRANKLIN  
 Vice-President—Traffic

Broad Street Station Building  
 1617 Pennsylvania Boulevard  
 Philadelphia 4

November 30, 1943  
 File C

General J. R. Kilpatrick,  
 Hampton Roads Port of Embarkation,  
 Newport News, Virginia.

Dear General Kilpatrick:

This has reference to your letter of November 9th, file SPTAK 548.3-TD, in connection with wharfage and handling charges at Army Base Piers Nos. 1 and 2, Norfolk, Virginia.

Please be assured that this matter will receive proper consideration and you will be further advised as promptly as possible.

Very truly yours,

/s/ W. S. FRANKLIN.

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EXHIBIT NO. ....  
 WITNESS: .....  
 PAGE NO. 30

SOUTHERN RAILWAY SYSTEM  
 Office of Vice President  
 In charge of Traffic

E. R. OLIVER  
 Vice President

Washington 13, D. C.  
 November 30, 1943. sbl.

Brigadier General J. R. Kilpatrick, U. S. A.,  
 Hampton Roads Port of Embarkation,  
 Newport News, Virginia.

Dear General Kilpatrick:

I have received your letter of November 9th, File SPTAK 548.3-TD, in regard to wharfage and handling at Army Base Piers Nos. 1 and 2, Norfolk, Va.:



otherwise provided herein, will apply only on traffic which does not leave the possession of the carrier, delivered by the Atlantic Port Terminal carriers direct to the steamer or steamer's dock upon arrival at the port or after storage or transit has been accorded by the port carrier at the port under tariffs which permit the application of the export rates, and also on traffic delivered to the party entitled to receive it at the carrier seaboard stations to which export rates apply which traffic is handled direct from carriers stations to steamship docks and on which required proof of exportation is given.

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EXHIBIT No. 4

WITNESS: HEIMBAUGH

PAGE No. 1

## INTERSTATE COMMERCE COMMISSION

DOCKET No. 29117

UNITED STATES OF AMERICA, COMPLAINANT

V.

ABERDEEN AND ROCKFISH RAILROAD CO., *Et Al.*

DEFENDANTS

## STATEMENT SHOWING BASIS

ABSORPTION OF WHARFAGE AND HANDLING CHARGES  
AT TERMINALS IN THE NORFOLK, VA., HARBOR DISTRICT NAMED  
HEREIN AS PUBLISHED IN TARIFFS ISSUED BY THE  
ATLANTIC COAST LINE RAILROAD COMPANY  
NORFOLK AND WESTERN RAILWAY COMPANY  
NORFOLK SOUTHERN RAILWAY COMPANY  
THE PENNSYLVANIA RAILROAD COMPANY  
SEABOARD AIR LINE RAILWAY COMPANY  
SOUTHERN RAILWAY COMPANY  
THE VIRGINIAN RAILWAY COMPANY  
NORFOLK AND PORTSMOUTH BELT LINE RAILROAD COMPANY

ALSO

AT TERMINALS AT CERTAIN OTHER NORTH ATLANTIC PORTS

EXHIBIT NO. ....

WITNESS: .....

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Statement Showing Origin and Destination Stations  
Referred to in Exhibit No. . . Pages Nos. 12 to 44 from and  
to Which the Railroads Shown Below  
Publish Specific Provisions Concerning Wharfage,  
Handling and Terminal Charges at Norfolk, Va.

Apply  
Grouping as shown below when referred to in—

Stations	Apply Section number shown below when referred to in	Norfolk & Portsmouth Belt R.R. Tariff ICC No. 105
(Station numbers are referred to in those shown in Open . . . and prepay Station List No. 59 Agent A. P. . . . . Leland's ICC No. 24)	Norfolk & Western Ry. Tariff ICC No. 9179	Norfolk Southern Ry. Tariff ICC No. A-1148
	Virginian Ry. Tariff ICC No. 2196	South- ern Ry. Tariff ICC No. A-11013
ALL POINTS NOT PROVIDED FOR BELOW	1	C
ALABAMA—All Points	4	A
FLORIDA—All Points	4	A
GEORGIA—All Points	4	A
ILLINOIS—All Points	1	C
INDIANA—All Points	1	C
KENTUCKY:		
Covington Henderson		
Lexington Louisville		
Maysville Newport		
Owensboro Paducah	1	C

Apply  
Grouping as shown Below when referred to in—

Stations (Station numbers are referred to in those shown in Open and prepay Station List No. 59 Agent A. P. Leland's ICC No. 24)	Apply Section number shown below when referred to in Norfolk & Western Ry. Tariff ICC No. 9179	Virginian Ry. Tariff ICC No. 2196	South-ern Ry. Tariff ICC No. A-11013	Norfolk South-ern Ry. Tariff ICC No. A-1148	Norfolk & Portsmouth Belt R.R. Tariff ICC No. 105
Winchester	1	C	3	C	C
Ashland Catlettsburg )					
Fort Thomas )					
Elkhorn City Ludlow )	4	A	1	A	C
402					
Carolina, Clinchfield and Ohio Ry.—All Stations	2	B	3	A	B
Chesapeake and Ohio Ry.—All Stations	1	C	1	C	C
Moorehead and North Fork R. R.—All Stations	1	C	1	C	C
Norfolk and Western Ry.—All Stations	2	B	2	A	B
All Other Points	4	A	3	A	C
LOUISIANA:					
Points west of the Mississippi River	3	D	1	C	C
All Other Points	4	A	3	A	A
MARYLAND—All Points	1	C	1	C	C
MICHIGAN—All Points	1	C	1	C	C
MINNESOTA—All Points	1	C	1	C	C
MISSISSIPPI—All Points	4	A	3	A	A
NEW YORK—All Points	1	C	1	C	C
NORTH CAROLINA:					
Norfolk and Western Ry. Stations					
Hurricane Branch (Station No. 2320)	4	B	3	A	B
Nella to West Jefferson (Stations Nos. 2325 to 2390), inc.	2	B	2	A	B
All Other Points	4	A	3	A	A
403					
OHIO—All Points	1	C	1	C	C
PENNSYLVANIA—All Points	1	C	1	C	C
SOUTH CAROLINA—All Points	4	A	3	A	A
TENNESSEE:					
Bristol	2	B	3	B	B
All Other Points	4	A	3	A	A
VIRGINIA:					
Atlantic Coast Line R.R. Stations:					
Richmond (Station No. 10)	1	C	1	C	C
Richmond (Harrison St.) to Richmond (Bird St.) (Station Nos. 15 to 25), inc.	1	C	1	C	A
South Richmond (Station No. 30)	1	C	1	C	C
Clopton to Ellerslie (Station Nos. 35 to 80), inc.	1	C	1	C	A

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Page No. 5



Apply  
Grouping as shown below when referred to in

Stations (Station numbers are referred to in those shown in Open and prepay Station List No. 59 Agent A. P. Ireland's ICC No. 24)	Apply Section number shown below when Norfolk & Western Ry. Tariff ICC No. 9179	Virginian Ry. Tariff ICC No. 2196	Southern Ry. Tariff ICC No. A-11013	Norfolk Southern Ry. Tariff ICC No. A-1148	Norfolk & Portsmouth Belt R.R. Tariff ICC No. 105
Petersburg (Station No. 90)	1	C	1	C	C
Suffolk	2	B	2	C	B
All Other Stations	4	A	3	C	A
Baltimore and Ohio R.R. —All Stations	1	C	1	C	C
Carolina, Clinchfield and Ohio Ry. Stations:					
All Stations South of St. Paul	4	A	3	C	A
All Other Stations	2	B	2	B	B
Chesapeake and Ohio Ry. Stations:					
Buchanan Buena Vista)					
Charlottesville )					
Glasgow Lynchburg )					
Natural Bridge Orange )					
Waynesboro Waynes-					
boro Union Station )	1	C	1	C	C
All Other Points	1	B	1	C	C
Chesapeake Western Ry. Stations:					
Bridgewater	1	C	1	C	C
Dayton	1	C	1	C	C
Harrisonburg	1	C	1	C	C
All other Stations	2	B	2	C	B
Danville and Western Ry. —All Stations	4	A	3	C	A
Interstate R. R.—All Stations	4	A	3	C	A
Louisville and Nashville R. R.—All Stations	4	A	3	C	A
Nelson and Albemarle Ry. —All Stations	2	B	2	C	C
Norfolk and Western Ry. Stations:					
Buchanan Buena Vista )					
Glasgow Lynchburg )					
Natural Bridge )					
Petersburg Roanoke )					
Waynesboro )	1	C	1	C	C
All Stations South of Brookneal	4	A	3	C	A
Falwell Rustburg )					
Gladys Lone Jack )					
Pettys Naruna )					
Candler Winfall )					
Jennings, J. L. )	2	B	2	C	A
All Stations South of Roanoke	4	A	3	C	A
All Other Stations	2	B	2	C	B



Apply  
Grouping as shown below when referred to in—

Stations (Station numbers are referred to in those shown in Open and prepay Station List No. 59 Agent A. P. Leland's ICC No. 24)	Apply Section number shown below when referred to in Norfolk & Western Ry. Tariff ICC No. 9179	Virginian Ry. Tariff ICC No. 2196	Southern Ry. Tariff ICC No. A-11013	Norfolk Southern Ry. Tariff ICC No. A-1148	Norfolk & Portsmouth Belt R.R. Tariff ICC No. 105
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Norfolk Southern R. R.—					
—All Stations	4	A	3	A	A
Pennsylvania R. R.—All Stations	1	C	1	C	C
Richmond, Fredericksburg and Potomac R. R.—All Stations	1	C	1	C	C
Seaboard Air Line Railway Stations:					
Amphill	1	C	1	C	(8)C
Bellbluff	4	C	3	C	A
Barnes Bellwood	)				
Buckhead Chester	)				
Creamery Dixdistil	1	C	1	C	A
Petersburg Richmond	1	C	1	C	C
South Richmond	1	C	1	C	A
Hopewell Suffolk	2	B	2	C	B
All Other Stations	4	A	3	C	C

(8) Applicable only on import wood pulp.

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Southern Ry. Stations:					
Altavista	4	A	3	C	B
Bristol	2	B	2	B	B
Burkeville	)				
Front Royal Riverton	2	B	2	C	B
Suffolk	2	B	2	B	B
Waverly	2	A	2	C	B
Alexandria Charlottes-					
ville Lynchburg	)				
Orange Richmond	)				
Harrisonburg	1	C	1	C	C
Strasburg	4	A	1	C	C
Main Line Stations	)				
Alexandria to Winesap	)			C	(X)B
Sorocco to Boone (Sta-					
tions Nos. 2722 to 2740	2	A	3	C	C
All Other Stations	4	A	3	C	C
Valley R. R.—All Stations	1	C	1	C	C
Virginia Blue Ridge Ry.—All Stations	4	A	3	C	C
Virginia Central Ry.—All Stations	1	C	1	C	C

(X) Stations on Southern Railway Main Line Alexandria, to Winesap, Va. are included in Group B only on shipments of Apples, carloads for export.

Apply  
Grouping as shown below when referred to in—

Stations (Station numbers are those shown in Open and prepay Station List No. 59 Agent A.P. Leland's ICC No. 24)	Apply Section number shown below when Norfolk & Western Ry. Tariff ICC No. 9179	Virginian Ry. Tariff ICC No. 2196	Southern Ry. Tariff ICC No. A-11013	Norfolk Southern Ry. Tariff ICC No. A-1148	Norfolk & Portsmouth Belt R.R. Tariff ICC No. 103
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Virginian Ry. Stations:					
Roanoke	1	C	1	C	C
All Other Stations	2	B	2	C	B
Washington and Old Dominion Ry.—All Sta- tions	2	B	2	C	C
Winchester and West- ern R. R.—All Stations	1	C	1	C	C
WEST VIRGINIA:					
Chesapeake and Ohio Ry. Stations:					
All Stations Cotton Hill and East	2	C	2	C	C
All Other Stations	1	C	1	C	C
Norfolk and Western Ry. Stations:					
Ceredo Charles Town Kenova					
Shenandoah Jct.	1	C	1	C	C
All Other Stations	2	B	2	C	C
Virginian Ry. Stations:					
Beckley Oak Hill					
Pemberton	2	C	2	C	C
All Other Points	2	B	2	C	C
All Other Points	1	C	1	C	C

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EXHIBIT No. ....

WITNESS: .....

PAGE No. 17

### STATEMENT SHOWING BASIS FOR

ABSORPTION OF WHARFAGE, HANDLING AND TERMINAL CHARGES  
AND

ALLOWANCES OF WHARFAGE AND HANDLING CHARGES

AT

TERMINALS WITHIN THE NORFOLK, VA. HARBOR DISTRICT  
SPECIFICALLY INDICATED HEREIN

AS PUBLISHED IN NORFOLK SOUTHERN RAILROAD COMPANY  
TARIFF I.C.C. No. A-1148 (RAILROAD TARIFF F.T.D. No. 338)  
Rule 170 effective 1 July 1941.

Absorption of Wharfage and Handling Charges on Import  
Traffic When Rates Are Published to Apply From Ship

side. (Applicable Only on Traffic Destined to Points South of Charlotte, N. C., Moving Through Charlotte, N. C.)

When rates from Norfolk, Va., on import-traffic are published to apply from shipside the Norfolk Southern Railroad Company will absorb wharfage and handling charges published and lawfully on file with the Interstate Commerce Commission; necessary to cover transfer from shipside to cars, on traffic for movement from Norfolk, Va., via Norfolk Southern Railroad Company.

*Rule 175 effective 18 November 1943.*

Application of Wharfage, Handling and Storage Charges

At:

Imperial Tobacco Company, Ltd. (Berkley Warehouses and Tracks), Norfolk, Va.

Jones Cold Storage and Terminal Corporation, (East Water Street Terminals), Norfolk, Va.

Lamberts Point Docks, Inc. (Lamberts Point Division) Norfolk, Va. (7-A) C-1

Lincoln Tidewater Terminals, Inc., Norfolk, Va.

Municipal Grain Elevator, Norfolk, Va.

Norfolk Tidewater Terminals, Inc., At Pinners Point (Portsmouth, Va.)

Norfolk Warehouse Company, Inc., Norfolk, Va.

Southgate Terminal Corporation (Portsmouth Division Terminals)

Southgate Terminal Corporation (Norfolk Division Terminals) C-2

Rules and charges as published in Rule No. 180 of tariff or as amended apply at the Terminals as shown above and only on traffic moving in connection with the Norfolk Southern Railway Company.

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EXHIBIT No. ....

WITNESS: .....

PAGE No. 18

*Rule 180 effective 18 November 1943.*

Absorption of Wharfage and Handling Charges At:

Imperial Tobacco Company, Ltd., (Berkley Warehouses and Tracks), Norfolk, Va.

Jones Cold Storage & Terminal Corporation (East Water Street Terminals), Norfolk, Va.

Lamberts Point Docks, Inc. (Lamberts Point Division), Norfolk, Va. (7-A) C-1.

Lincoln Tidewater Terminals, Inc., Norfolk, Va.

Municipal Grain Elevator, Norfolk, Va.

Norfolk Tidewater Terminals, Inc., at Pinners Point (Portsmouth, Va.)



Norfolk Warehouse Company, Inc., Norfolk, Va.  
Southgate Terminal Corporation (Portsmouth Division  
Terminals).

Southgate Terminal Corporation (Norfolk Division Ter-  
minals). C-2

(a) On export, import, coastwise and interoceanic traf-  
fic originating at or destined to points shown in Group "C"  
Territory of this tariff (see Rule 1), moving through Char-  
lotte, N. C., in connection with the Norfolk Southern Rail-  
way Company through the Terminals shown in this rule the  
charges for wharfage and handling will be:

Wharfage on all freight, per one hundred  
pounds ..... 1 cent

Handling on all freight, in closed cars per  
one hundred pounds ..... 3 cents

as published in tariffs referred to in Note 1 below, and will  
be included in the transportation rate applicable on such  
traffic to and from Norfolk, Va.

(b) On export, import, coastwise and interoceanic traf-  
fic originating at or destined to points other than those  
named in Group "C" Territory of this Tariff, (See Rule 1),  
moving in connection with the Norfolk Southern Railway  
through the terminals shown in this rule, on rates applica-  
ble to or from shipside, wharfage and handling charges will  
be as specifically shown in the rate tariffs containing ship-  
side rates, and in the absence of such specific charges, same  
will be as shown in tariffs referred to in Note 1 below and  
will be included in the transportation rates on such traffic to  
or from Norfolk, Va. except that the allowance for wharfage  
or handling charges shall, in no case, exceed four (4) cents  
per 100 pounds.

(c) In all other respects the wharfage, handling, stor-  
age and all other charges as published in tariffs referred  
to in Note 1 below, will be in addition to the transportation  
rates applicable on such traffic to and from Norfolk, Va.

NOTE 1—Norfolk and Portsmouth Belt Line Railroad's  
I.C.C. No. 105 or Agent R. H. Hoke's Freight Tariff No.  
326-G, I.C.C. No. 834, supplements to or successive issues  
thereof.

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EXHIBIT No. ....

WITNESS: .....

PAGE No. 19

Rule 185 effective 1 September 1943.

Allowances To:

Imperial Tobacco Co., Ltd., (Berkley Warehouses and  
Tracks), Norfolk, Va.



Jones Cold Storage & Terminal Corporation. (East Water Street Terminals), Norfolk, Va.

Lamberts Point Docks, Inc., (Lamberts Point Division), Norfolk, Va. (7-A) C-1.

Lincoln Tidewater Terminals, Inc.

Norfolk Tidewater Terminals, Inc., At Pinner's Point (Portsmouth, Va.)

Norfolk Warehouse Company, Inc., Norfolk, Va.

For the use of wharves; warehouses, slips, channels, tracks and approaches, and other facilities at the terminals as listed in this rule, and for other services rendered by the terminals listed in this rule, as Agent for the Norfolk Southern Railway Company, the Norfolk Southern Railway Company will make an allowance equal to the amount of charges as provided in:

Agent R. H. Hoke's Freight Tariff No. 326-G, I.C.C. No. 834, supplements to or successive issues thereof, subject to maximum charges provided in Rule No. 180 to the terminals as listed in this rule, except charges for storage when held in cars, which charges accrue to the Norfolk Southern Railway Company.

C-1—Lamberts Point Docks, Inc., (Sewells Point Division), Norfolk, Va., formerly shown in this Rule is hereby CANCELLED. See Lincoln Tidewater Terminals, Inc.

C-2—Transport, Trading and Terminal Corporation, formerly shown in this Rule is hereby CANCELLED. No longer in operation.

(7-A)—REISSUED from Supplement No. 7, effective April 10, 1942.

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EXHIBIT No. ....

WITNESS: .....

PAGE No. 20

### STATEMENT SHOWING BASIS

FOR

ABSORPTION OF WHARFAGE AND HANDLING CHARGES  
AT TERMINALS IN NORFOLK, VA., SPECIFICALLY INDICATED  
HEREIN

AS PUBLISHED IN THE PENNSYLVANIA RAILROAD COMPANY

TARIFF I.C.C. No. 2613

(RAILROAD TARIFF No. 1378-H)

Item 305—Effective 1 December 1942

Transport, Trading and Terminal Corporation—

Any charge of the Norfolk & Portsmouth Belt Line Railroad for wharfage, storage, loading, unloading,

handling, transferring, or any service whatever at the Transport, Trading and Terminal Corporation, as per Norfolk & Portsmouth Belt Line Railroad Company Tariff 6-J, I.C.C. 105, will be in addition to the rate to or from Norfolk, Va., except that on export, import, coastwise and intercoastal traffic, any quantity, on which the freight rate is not less than 10 cents per 100 pounds, or \$2.00 per ton, wharfage charge of 1 cent per 100 pounds and handling charge not to exceed 3 cents per 100 pounds or 60 cents per ton, will be included in the freight rate to or from Norfolk, Va., with the following exceptions (as per Items 375, 380 and 385).

Item 310—Effective 1 December 1942

Lincoln Tidewater Terminals, Inc.—

Any charge of the Norfolk and Portsmouth Belt Line Railroad Company for wharfage, storage, loading, unloading, handling, transferring, or any service whatever at the Lincoln Tidewater Terminals, Inc. as per Norfolk and Portsmouth Belt Line Railroad Company's Tariff 6-J, I.C.C. 105, will be in addition to the rate to or from Norfolk, Va., except that on export, import, coastwise and intercoastal traffic, any quantity, on which the freight rate is not less than 10 cents per 100 pounds, or \$2.00 per ton, wharfage charge of 1 cent per 100 pounds, and handling charge not to exceed 3 cents per 100 pounds, or 60 cents per ton will be included in the freight rate to or from Norfolk, Va., except as provided in Items 380 and 385.

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EXHIBIT No. ....

WITNESS: .....

PAGE No. 21

Item 365—Effective 1 December 1942

Lambert's Point Dock, Inc.—

On Export, Import, Intercoastal and Coastwise, traffic any quantity which pays the Pennsylvania Railroad Company and its connections 10 cents per 100 pounds, or over, or \$2.00 per ton, or over, wharfage charge of one cent per 100 pounds and handling charge not to exceed 3 cents per 100 pounds or 60 cents per ton, will be included in the freight rate to or from Norfolk, Va., except as provided in Items 375, 380 and 385.



## Item 375—Effective 1 December 1942

## Absorption of Wharfage and Handling Charges—

(1) (a) Handling Charges will not be absorbed on freight in open cars, except on lumber, all kinds (including wooden logs, wooden poles, wooden ties and wooden piling); carloads (see paragraph (b)).

(b) When stowing in open cars is required handling charge of  $\frac{1}{2}$  cent per 100 pounds or 10 cents per 2000 pounds will be absorbed on lumber, all kinds (including wooden logs, wooden poles, wooden ties and wooden piling), carloads, loaded on open cars at the Lamberts Point Terminals (Norfolk & Western Railway Company Piers), Lamberts Point Docks, Inc.

## Item 380—Effective 1 December 1942

## Absorption of Wharfage and Handling Charges—

(2) Wharfage and/or charges will not be absorbed on freight accorded lighterage, or on grain or any other inbound or outbound traffic milled, mixed, malted or stored in transit at the Transport, Trading and Terminal Corporation; Lambert's Point Docks, Inc., Lincoln Tidewater Terminals, Inc., Norfolk Warehouse Company, Inc., H. B. Rogers, Inc. (Norfolk Division Terminals); Security Warehouse Corporation; Imperial Tobacco Company, Ltd., (Berkely Warehouse and Tracks); Norfolk Southern Railroad Company, Berkely Terminals; Jones Cold Storage and Terminal Corp. (East Water Street Terminals); Lamberts Point Terminals (Norfolk & Western Railway Company Piers), Norfolk, Va.; H. B. Rogers, Inc. (Portsmouth Division Terminals); Pier No. 1, Pinners Point Terminal, Portsmouth, Va., Norfolk Tidewater Terminals, Inc., Pinners Point (Portsmouth), Va.

## Item 385—Effective 1 December 1942

## Absorption of Wharfage and Handling Charges—

In all other respects on export, import, intercoastal and coastwise traffic the wharfage, handling, storage and/or other charges applicable at the Transport Trading and Terminals Corporation; Lambert's Point Docks, Inc., Lincoln Tidewater Terminals, Inc., Norfolk Warehouse Company, Inc., H. B. Rogers, Inc.,

(Norfolk Division Terminals) Security Warehouse Corporation; Imperial Tobacco Company, Ltd.; (Berkley Warehouses and Tracks); Norfolk Southern Railroad Company, Berkley Terminals; Jones Cold Storage and Terminal Corporation, (East Water Street Terminal); Lambert's Point Terminals; (Norfolk & Western Railway Company Piers), Norfolk, Va., H. B. Rogers, Inc., (Portsmouth Division Terminals), Pier No. 1; Pinner's Point Terminal, Portsmouth, Va., and Norfolk Tidewater Terminals, Inc., Pinner's Point (Portsmouth), Va., will be in addition to the rate to and from Norfolk, Va., or Portsmouth, Va., as the case may be published in tariffs lawfully on file with the Interstate Commerce Commission.

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EXHIBIT  
SHOWING INITIAL PUBLICATION  
AUTHORIZING ABSORPTION OF WHARFAGE AND HANDLING  
BY THE PREDECESSOR COMPANY OF THE PENNSYLVANIA  
RAILROAD

No supplement to this tariff will be issued except for ICC No. 3328 the purpose of cancelling the tariff.

New York, Philadelphia and Norfolk Railroad Company

Joint Freight Tariff  
of  
Absorptions  
of  
Wharfage, Handling and Storage Charges  
at  
Municipal Terminals  
Norfolk, Va.

Any charge of the Norfolk & Portsmouth Belt Line Railroad Company for wharfage, storage, unloading, handling, transferring or any service whatever, at the Municipal Piers or adjacent warehouses, Army Supply Base, as per Norfolk, Portsmouth Belt Line Railroad Company's Tariff I.C.C. No. 57, supplements thereto and reissues thereof, will be in addition to the rate to or from Norfolk, Va., except that on export and import traffic, in carloads,



originating at or destined to Trunk Line Western Termini Points (Note 1) and points west thereof, (except points in the south and southwest routing via Potomac Transfer, Va., Hagerstown Transfer, Md., and Richmond, Va.), the freight rate to and from Norfolk, Va., will include wharfage of 1 cent per 100 pounds and handling charge of 3 cents per 100 pounds, or 60 cents per ton, net or gross, as rated, except that the handling charge will not be included on freight in open-top cars.

NOTE 1.—The Trunk Line Western Termini referred to are as follows:

Suspension Bridge, N. Y.	Erie, Pa.
Niagara Falls, N. Y.	Pittsburg, Pa.
Tonawanda, N. Y.	Allegheny, Pa.
Black Rock, N. Y.	Bellaire, Ohio
Buffalo, N. Y.	Wheeling, W. Va.
East Buffalo, N. Y.	Parkersburg, W. Va.
Buffalo Junction, N. Y.	Point Pleasant, W. Va.
Dunkirk, N. Y.	Kenova, W. Va.
Salamanca, N. Y.	

The switching charge of the Norfolk & Portsmouth Belt Line Railroad Company are absorbed as per New York, Philadelphia and Norfolk Railroad Company Tariff I.C.C. No. 3329.

Issued Norfolk, Va., April 8, 1921 Effective April 15, 1921

Issued on five days' notice, under special permission of the Interstate Commerce Commission, No. 52468, of April 4, 1921.

By

RANDOLPH B. COOKE,  
Division Freight Agent,  
Norfolk, Va.

J. B. LARGE,  
Freight Traffic Manager,  
Eastern Region,  
Philadelphia, Pa.  
GUY S. McCABE,  
General Freight Agent,  
Eastern Region,  
Philadelphia, Pa.

E. P. Bates,  
Ass't. Freight Traffic Manager  
Eastern Region,  
Philadelphia, Pa.  
R. R. BLYDENBURGH,  
Ass't General Freight Agent,  
Eastern Region,  
Philadelphia, Pa.

Agents Index No. 54

500

(File 193-H-5)

Received

Month Day Year

EXHIBIT No. ....

WITNESS: .....

PAGE No. 26

## STATEMENT SHOWING BASIS

FOR

ABSORPTION OF WHARFAGE OR HANDLING CHARGES

AT

TERMINALS WITHIN THE NORFOLK, VA. HARBOR DISTRICT

AS PUBLISHED IN SOUTHERN RAILWAY SYSTEM TARIFF

I. C. C. No. A-11013

(Southern Railway Port Charges Tariff No. 10)

*Item 35—Effective 15 November 1942.*

Absorption of Wharfage and or Handling Charges on Export, Import, Coastwise and Intercoastal Traffic at Berkley, Lambert Point, Norfolk, Pinnars Point and Portsmouth, Va.

Except where tariffs lawfully on file with the Interstate Commerce Commission or Virginia State Corporation Commission specifically provide otherwise, when to or from points in Group 1, page 4, wharfage, handling or terminal charges shown below will apply and be included in the transportation charge (See Note E of this item).

Unless otherwise specifically provided in tariffs the terminal charges shown below must be deducted before prorating.

## TABLE OF WHARFAGE AND HANDLING CHARGES.

In Cents Per Hundred Pounds, Unless Otherwise Specified.

Commodity Group Nos.	COMMODITIES	Charges
1	Cotton .....	2 1/4
2	Forgings, Iron or Steel. For Export: Same charges and conditions as applicable on Pig Iron, for export. (See Commodity Group No. 6.)	
3	Live Stock. Horses and mules .....	No Wharfage or handling charges when for export
4	Lumber, Poles, Ties and Piling. (See Note D. of this item) .....	1
5	Pig Iron. (Except as provided in Commodity Group No. 6), per ton of 2,240 pounds .....	14

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- 6 Pig Iron and articles named in Note C below. For Export:

Wharfage and handling (Note A of this Item), including sixty (60) days storage on open piers, bulk heads or lands of Southern Railway, per ton (Note B, of this Item).....

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Storage for each succeeding month or fraction thereof after expiration of the first sixty (60) days period, per ton (Note B, of this Item).....

5½

- 7 All other freight.....

1

Note A—Applies on shipments from all points of origin, transported to the port on domestic bills of lading, and stored awaiting arrival of vessel, and will be in addition to the rate applicable to the port "proper" or for "ship-side delivery."

Note B—Charges apply per ton of 2,000 pounds or 2,240 pounds according as the rate to port, on which the shipment moves applies per ton of 2,000 or 2,240 pounds.

Note C—The charges published in this Item will apply on the following:

Bar, iron or steel	Pipe, iron or steel,	Steel cross ties,
Billets, iron or steel	Poles, iron or steel	Steel cross tie fasten-
Boilers,	(Telegraph, Telephone	ings, in straight carloads
Boiler Tubes,	or electric street railway)	with iron or steel rails or
Freight car parts, iron,	Rail fastenings in bun-	steel cross ties,
steel or wood (each pack-	dles, straight carloads, or	Structural iron or steel.
age or piece to weigh not	mixed carloads with iron-	
less than 500 pounds.)	or steel rails,	
Frogs and switches	Rails, iron or steel,	
(when shipped with iron		
or steel rails),		

Note D—In addition to the above wharfage, handling or terminal charges, the following charges will be assessed:

- (a) On lumber, all kinds (including logs, wooden poles, wooden ties and wooden piling), paying rate in excess of nine and one-half (9½) cents per 100 pounds or one hundred and eighty-nine (189) cents per 2,000 pounds, a charge of thirty-nine (39) cents per 2,000 pounds for loading on open cars and eighty-three (83) cents per 2,000 pounds for loading into box cars, when the service is performed by or for account of the Southern Railway will be assessed in addition to the freight charge, which charge will accrue to the Southern Railway, whether handled direct from vessels to cars, or from piers to cars, or received from vessels by lighters or car floats, or received from intermediate storage.

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- (b) On lumber, all kinds (including logs, wooden poles, wooden ties and wooden piling), paying rate of less than nine and one-half (9½) cents per



100 pounds, or one hundred and eighty-nine (189) cents per 2,000 pounds, a charge of fifty-five (55) cents per 2,000 pounds (see paragraph c) for loading on open cars or eighty-three (83) cents per 2,000 pounds for loading into box cars, when the service is performed by or for account of the Southern Railway will be assessed in addition to the freight charge, which charge will accrue to the Southern Railway, whether handled direct from vessels to cars, or from piers to cars, or received from vessels by lighters or car floats, or received from intermediate storage.

(c) The combined freight and loading charges not to exceed 12 cents per 100 pounds or 237 cents per 2000 pounds for loading on open cars.

Note E—Delivery and receipt at Berkley, Lambert Point, Norfolk, Pinnars Point and Portsmouth, Va. and absorption of terminal charges thereat.

On traffic received from or delivered to vessels over the piers of the Norfolk Southern R. R. at Berkley, Norfolk, and Western Ry. at Lambert Point or Norfolk, Atlantic Coast Line R. R. at Pinnars Point or the Seaboard Air Line Ry. at Portsmouth, Va., when originating at or destined to points shown in Group 1, page 4, herein, the Southern Railway Company will absorb in the line haul rates the wharfage and handling charges not to exceed four (4) cents per one hundred pounds of the Norfolk Southern R. R. at Berkley, Norfolk and Western Ry. at Lambert Point or Norfolk, A. C. D. R. R. at Pinnars Point or Seaboard Air Line Ry. at Portsmouth, Va. as published by those carriers for application at their respective terminals.

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WITNESS: .....

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*Item 45—Effective 15 November 1942.*

Table of Wharfage, Handling or Terminal Charges. (Applicable at Norfolk, Pinnars Point, Portsmouth and West Norfolk, Va.)

Except where tariffs lawfully on file with Interstate Commerce Commission or Virginia State Corporation Commission specifically provide otherwise, the wharfage, handling or terminal charges shown in this Table will apply and be in addition to the transportation charges.

Applicable on Coastwise, Export and Import Traffic from or to the following points, viz:

Applicable on coastwise, export and import traffic from or to points designated in Group 2. Item I herein, and Southern Railway stations Alexandria, Va. (Index 15) to Winesap, Va. (Index 315), inclusive (See Note A of this Item).

For list of stations (and Station Index numbers in connection therewith) see Agent A. P. Leland's I. C. C. No. A-22, Official List of Open and Prepay Stations No. 57, supplements thereto or reissues thereof.



Cotton, per 100 pounds.....	2¼ cents
Live Stock, per 100 pounds.....	3¾ cents
Lumber and other Forest Products taking Lumber rates as per tariff applicable from points of origin of the traffic, lawfully on file with the Interstate Commerce Commis- sion and Virginia State Corporation Commission, per 100 pounds (See Note B of this Item).....	13¼ cents
Lumber, Logs, Poles, Ties and Piling (See Note B of this Item) .....	3 cents
Pig Iron, per ton 2,240 pounds.....	14 cents
All other freight, per 100 pounds (See Note C of this Item) .....	1 cent

Note A—Stations on Southern Railway Alexandria, Va. (Index 15) to Winesap, Va. (Index 315), inclusive, are included in this Table only on export shipments of apples, in carloads.

Note B—In addition to the above wharfage, handling or terminal charges, the following charges will be assessed:

(a) On lumber, all kinds (including logs, wooden poles, wooden ties and wooden piling), paying rate in excess of nine and one-half (9½) cents per 100 pounds or one hundred and eighty-nine (189) cents per 2,000 pounds, a charge of thirty-nine (39) cents per 2,000 pounds for loading on open cars and eighty-three (83) cents per 2,000 pounds for loading into box cars when the service is performed by or for account of the Southern Railway will be assessed in addition to the freight charge, which charge will accrue to the Southern Railway, whether handled direct from vessels to cars, or from piers to cars, or received from vessels by lighters or car floats, or received from intermediate storage.

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EXHIBIT No.

WITNESS:

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Item 45—Effective 15 November 1942—Cont'd:

(b) On lumber, all kinds (including logs, wooden poles, wooden ties and wooden piling), paying rate of less than nine and one-half (9½) cents per 100 pounds, or one hundred and eighty-nine (189) cents per 2,000 pounds, a charge of fifty-five (55) cents per 2,000 pounds (See paragraph c) for loading on open cars or eighty-three (83) cents per 2,000 pounds for loading into box cars, when the service is performed by or for account of the Southern Railway will be assessed in addition to the freight charge which charge will accrue to the Southern Railway, whether handled

direct from vessels to cars, or from piers to cars, or received from vessels by lighters or car floats, or received from intermediate storage.

(c) The combined freight and loading charges not to exceed 12 cents per 100 pounds or 237 cents per 2,000 pounds for loading on open cars.

Note C—On shipments of apples, carloads, for export, originating at stations on Southern Railway Alexandria, Va. (Index 15) to Winesap, Va. (Index 315), inclusive, the current rates to Norfolk will include the export terminal charge of one (1) cent per 100 Pounds.

*Item 60—Effective 15 November 1942.*

Wharfage and Handling Charges on Coastwise Traffic at Brunswick, Ga., Charleston, S. C., Chickasaw, Ala., Jacksonville, Fla., Mobile, Ala., Newport News, Va., Norfolk, Va., Pinners Point, Va., Portsmouth, Va., Savannah, Ga., West Norfolk, Va. and West Point, Va.

Absorption of Wharfage and Handling Charges on Traffic Delivered to Steamships at Port.

(a) In the absence of through rates, or specific rates on coastwise traffic via the Southern Railway to Brunswick, Ga., Charleston, S. C., Chickasaw, Ala., Jacksonville, Fla., Mobile, Ala., Norfolk, Va., Pinners Point, Va., Portsmouth, Va., Savannah, Ga., West Norfolk, Va., and West Point, Va. (See Exceptions of this Item), inland domestic rates will apply to shipside (see Note A of this Item) when originating at points in the following states:

Arizona,	Michigan,	Pennsylvania;
Arkansas,	Minnesota,	South Dakota,
California,	Missouri,	Texas,
Colorado,	Montana,	Utah,
Idaho,	Nebraska,	Washington,
Illinois,	Nevada,	West Virginia,
Indiana,	New Mexico,	Wisconsin,
Iowa,	North Dakota,	Wyoming,
Kansas,	Ohio,	
Louisiana (West of	Oklahoma,	
Mississippi River),	Oregon,	

Also

Ashland	Ky.	Ludlow	Ky.
Chattanooga	Ky.	Maysville	Ky.
Covington	Ky.	Memphis	Tenn.
Fort Thomas	Ky.	Newport	Ky.
Henderson	Ky.	Owensboro	Ky.
Louisville	Ky.	Paducah	Ky.

*Item 60—Effective 15 November 1942—Cont'd.*

(b) Except as provided in paragraph (a) where rates are not applicable to shipside, wharfage and handling charges shown in Agent R. H. Hoke's I. C. C. No. 654 (Port Charges Tariff 326-F), supplements thereto, or reissues thereof, will be added to cover delivery to shipside at Brunswick, Ga., Charleston, S. C., Chickasaw, Ala., Jacksonville, Fla., Mobile, Ala., Norfolk, Va., Pinners Point, Va., Portsmouth, Va., Savannah, Ga., West Norfolk, Va., and West Point, Va.

Note A: The provisions of paragraph (a) only apply when the haul from the points shown in paragraph (a), to the port, is via these lines.

## EXCEPTIONS

The provisions of this Item will not apply on:

Cotton and Cotton Linters, Lumber and Articles taking same rates or arbitraries higher, rates apply to shipside only when so specifically published in the tariffs publishing the rates otherwise wharfage and handling charges as provided in Agent R. H. Hoke's I. C. C. No. 654 (Port Charges Tariff 326-F), supplements thereto or reissues thereof, will be in addition to the through rate.

Grain and Grain Products handled through elevators at Chickasaw, Ala., or the Port of Mobile, Ala., for coastwise movement the elevator charges will be in addition to the rates for transportation of the grain and grain products to Chickasaw, Ala.; or Mobile, Ala.

Coastwise shipments of fertilizer and fertilizer materials, as described in Agent R. H. Heke's Tariff 392-C I. C. C. No. 636, supplements thereto or successive thereof.

*Item 80—Effective 15 November 1942.*

Absorption of Wharfage and Handling Charges at Norfolk, Va. on Traffic Moving Through:

Lincoln Tidewater Terminals, Incorporated.

Transport Trading & Terminal Corporation.

Southgate Terminals (Portsmouth Division).

(a) On export, import and coastwise traffic originating at or destined to points shown in Territorial Group 1, page



4, moving in connection with the Southern Railway through the terminals listed above, a wharfage charge of 1 (one) cent per hundred pounds on all freight and a loading or unloading charge of 3 (three) cents per hundred pounds on all freight in closed cars, as published in Norfolk and Portsmouth Belt Railroad Company's I. C. C. No. 105, supplements thereto or successive issues thereof, will be included in the transportation rate applicable on such traffic to or from Norfolk, Va.

(b) On export, import and coastwise traffic originating at or destined to points other than those named in Territorial Group 1, page 4, moving in connection with the Southern Railway through the terminals listed above, on rates applicable to or from shipside, the wharfage and handling charges as published in Norfolk and Portsmouth Belt Railroad Company's I. C. C. No. 105, supplements thereto or successive issues thereof, will be included in the transportation rate on such traffic to or from Norfolk, Va., except that the allowance for wharfage or handling shall in no case exceed 4 (four) cents per hundred pounds.

(c) In all other respects the wharfage, handling, storage and all other charges as published in Norfolk and Portsmouth Belt Railroad Company's I. C. C. No. 105, supplements thereto or successive issues thereof, will be in addition to the transportation rate applicable on such traffic to or from Norfolk, Va.

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WITNESS: .....

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*Item 85—Effective 15 November 1942.*

Absorption of Wharfage and Handling Charges at Norfolk, Va. on Traffic Moving Through:

- Imperial Tobacco Company's Berkley Terminals.
- Jones Cold Storage Corporation.
- Lambert's Point Docks, Incorporated.
- Norfolk Tidewater Terminals, Incorporated.
- Norfolk Warehouse Company, Incorporated.
- Security Warehouse Corporation.

(a) On export, import and coastwise traffic originating at or destined to points shown in Territorial Group 1, page 4, moving in connection with the Southern Railway through the terminal listed above, a wharfage charge of 1 cent per hundred pounds on all freight and a loading or unloading charge of 3 cents per hundred pounds on all freight in



closed cars, as published in Agent R. H. Hoke's I. C. C. No. 654 (Port Charges Tariff 326-F), supplements thereto or successive issues thereof, will be included in the transportation rate applicable on such traffic to or from Norfolk, Va.

(b) On export, import and coastwise traffic originating at or destined to points other than those named in Territorial Group 1, page 4, moving in connection with the Southern Railway Company through the terminals listed above, on rates applicable to or from shipside, the wharfage and handling charges as published in Agent R. H. Hoke's I. C. C. No. 654 (Port Charges Tariff 326-F); supplements thereto or successive issues thereof, will be included in the transportation rate on such traffic to or from Norfolk, Va., except that the allowance for wharfage and handling shall in no case exceed 4 cents per hundred pounds and except, further that the allowance on apples, carloads, from Southern Railway stations Alexandria, Va. (Index 15) to Winesap, Va. (Index 315) inclusive, of Agent A. P. Leland's I. C. C. No. A-22 (Official List of Open and Prepay Stations No. 57), supplements thereto or successive issues thereof, shall not exceed 1 cent per hundred pounds.

(c) In all other respects the wharfage, handling, storage and all other charges as published in Agent R. H. Hoke's I. C. C. No. 654 (Port Charges Tariff 326-F), supplements thereto or successive issues thereof, will be in addition to the transportation rates applicable on such traffic to or from Norfolk, Va.

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EXHIBIT No. ....

WITNESS: .....

PAGE No. 34

STATEMENT SHOWING BASIS  
FOR  
ABSORPTION OF WHARFAGE, HANDLING AND TERMINAL CHARGES  
AT  
TERMINALS WITHIN THE NORFOLK, VA., HARBOR DISTRICT  
SPECIFICALLY INDICATED HEREIN  
AS PUBLISHED IN  
THE VIRGINIAN RAILWAY COMPANY TARIFF I. C. C. No. 2196  
(RAILROAD TARIFF No. 1813-K)

*Item 1700, effective as amended 10 April 1942.*

At Lincoln Tidewater Terminals, Inc., Transport Trading & Terminal Corporation or Southgate Terminal Corporation (Portsmouth Division Terminals).

Wharfage, handling and terminal charges, as published in Norfolk and Portsmouth Belt Line Railroad Tariff No. 6-J, I. C. C. No. 105 will be included in the transportation rates applicable to or from Norfolk, Va., on the following traffic moving in connection with the Virginian Railway through the above terminals:

(a) Export, import, intercoastal and coastwise shipments, regardless of weight, originating at, or destined to points taking Groups C and D, except as provided in Notes A and B, below.

(b) Export carload shipments of Apples originating on the Virginian Railway.

Except as otherwise provided above and in tariffs lawfully on file with the Interstate Commerce Commission, the wharfage, handling, storage or other charges published in Norfolk and Portsmouth Belt Line Railroad Tariff No. 6-J, I. C. C. No. 105, will be in addition to the transportation rates on such traffic to or from Norfolk, Va.

EXHIBIT No. ....

WITNESS: .....

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*Item 1700, effective as amended 10 April 1942—Cont'd.*

Effective 10 April 1942, Supplement 7 amended this tariff as follows:

#### CHANGE IN NAME OF TERMINAL OPERATORS

Wherever the Terminal Operator shown in Column 1, below, appears in Tariff, as amended, it is hereby changed to read as shown in Column 2, below:

COLUMN 1	COLUMN 2
Now Reads	Change to Read
Lambert's Point Docks, Inc. (Sewalls Point Division) Norfolk, Virginia	Lincoln Tidewater Terminals, Inc., Norfolk, Virginia

*Item 1730, effective 30 April 1941.*

At Lambert's Point Docks, Inc. (Lambert Point Division) or Norfolk and Western Railway Lambert Point or Norfolk Terminals.

Wharfage and handling charges of not to exceed four (4) cents per hundred pounds on all freight as published in Norfolk and Western Railway Tariff G. F. No. 23-E),

1. C. C. No. 9101, will be included in the transportation rates applicable to or from Norfolk, Va., on the following traffic moving in connection with the Virginian Railway through above terminals:

(a) Export, import, intercoastal and coastwise shipments, regardless of weight, originating at, or destined to points taking Groups C and D, except as provided in Notes A and D, below.

(b) Export carload shipments of Apples originating on the Virginian Railway.

Except as otherwise provided above and in tariffs lawfully on file with the Interstate Commerce Commission, the wharfage, handling, storage or other charges published in Norfolk and Western Railway Tariff G. F. No. 23-E, I. C. C. No. 9101, will be in addition to the transportation rates applicable on such traffic to or from Norfolk, Va.

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EXHIBIT, No.

WITNESS

PAGE No. 36

*Item 1730 effective 30 April 1941—Cont'd.*

Explanation of notes referred to above—

NOTE A—The above wharfage and handling charges will not be included in the transportation rate on imported shipments of newsprint paper when moving from the port to destinations to which domestic rates are named in Agent F. D. Miller's Tariff 718-B, I. C. C. 518, and to destinations taking same rates as named in Agent F. D. Miller's (Pope Series) Southern Group Basis Tariff 700-A, I. C. C. 200.

NOTE B—The loading charges on lumber, logs, wooden poles, wooden ties and wooden piling, published in Note C, Item 910, Norfolk and Portsmouth Belt Line Railroad Tariff 6-J, I. C. C. 105, will not be included in the transportation rate, but will be in addition.

NOTE D—The loading charges on lumber, logs, wooden poles, wooden ties and wooden piling, published in Note A of Section 9 to Norfolk and Western Railway Tariff GF-23-E, I. C. C. 9101, will not be included in the transportation rate, but will be in addition.



EXHIBIT No. ....

WITNESS: .....

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## STATEMENT SHOWING BASIS

FOR

ALLOWANCES TO THE LINCOLN TIDEWATER TERMINALS,  
INCORPORATEDAND/OR TRANSPORT TRADING & TERMINAL CORPORATION  
AT NORFOLK, VA.AS PUBLISHED IN NORFOLK AND PORTSMOUTH BELT LINE  
RAILROAD COMPANY

TARIFF I. C. C. No. 105 (RAILROAD TARIFF No. 6-J)

Item No. 100-B effective 8 June 1942.

For the use of wharves, warehouses, slips, channels, tracks and approaches and other facilities at the Lincoln Tidewater Terminals, Incorporated and/or Transport Trading & Terminal Corporation, Norfolk, Virginia, and for other services rendered by the Lincoln Tidewater Terminals, Incorporated and/or Transport Trading & Terminal Corporation, as Agent for Norfolk and Portsmouth Belt Line Railroad Company, the Norfolk and Portsmouth Belt Line Railroad *makes an allowance*, equal in the amount of charges provided in this tariff, or as amended, to the Lincoln Tidewater Terminals, Incorporated and/or Transport Trading & Terminal Corporation, except on Import and Inbound Coastwise Lumber, Wooden Poles, Wooden Piling and Wooden Ties, carloads, to points in Group "B" (see page 10 of tariff, or as amended), the Lincoln Tidewater Terminals, Incorporated and/or Transport Trading & Terminal Corporation will receive an allowance of 1½ cents per 100 pounds, and on Import and Inbound Coastwise Logs, carloads, to points in Group "B" (see page 10 of tariff, or as amended), the Lincoln Tidewater Terminals, Incorporated and/or Transport Trading & Terminal Corporation will receive an allowance of 1 cent per 100 pounds, the remainder of the wharfage and handling charge to accrue to the road haul carrier, and except demurrage or storage when held in cars which accrued to Norfolk and Portsmouth Belt Line Railroad Company.

Group "B" referred to in item 100-B, quoted above, is explained on pages 3-9 of this exhibit.

Effective 10 April 1942, Supplement 22 amended this tariff as follows:



## CHANGE IN NAME OF TERMINAL OPERATORS

Wherever the Terminal Operator shown in Column 1 below, appears in Tariff, as amended, it is hereby changed to read as shown in Column 2, below:

COLUMN 1	COLUMN 2
Now Reads	Change to Read
Lamberts Point Docks, Incorporated (Sewalls Point Division)	Lincoln Tidewater Terminals, Incorporated.

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EXHIBIT No. ....

WITNESS: .....

PAGE No. 38

Item 100-A, effective 1 July 1940, provided for the allowances named in that item to the

Lamberts Point Docks, Incorporated  
(Sewalls Point Division)

and/or

Transport Trading & Terminal Corporation

Item 100, effective 22 September 1938, in the tariff, provided for the allowances named in that item to the

Lambert's Point Terminal Corporation  
(Sewalls Point Division)

and/or

Norfolk Tidewater Terminals.

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EXHIBIT No. ....

WITNESS: .....

PAGE No. 39

STATEMENT  
SHOWING

WHARFAGE, HANDLING AND TERMINAL CHARGES  
APPLICABLE ON TRAFFIC TO OR FROM SO-CALLED "ABSORPTION  
TERRITORY" AS PUBLISHED IN NORFOLK AND PORTSMOUTH  
BELT LINE RAILROAD COMPANY  
TARIFF I. C. C. No. 105 (RAILROAD TARIFF No. 6-J)

## SECTION 2.

## APPLICATION OF RATES.

Item 905-E—Effective 1 August 1943.

The wharfage, storage and handling or terminal charges shown in this section will apply on traffic to and from points shown in Group "B" on page 10 of Tariff.

## TABLE OF WHARFAGE, HANDLING OR TERMINAL CHARGES

Cotton, wharfage and handling, per 100 pounds.....	2¼ cents
Grain in bulk, wharfage only per 100 pounds (Note A)...	1 cent
Liquid Caustic Soda (Sodium hydroxide). (See Item 915-B) .....	
Live Stock, wharfage and handling, per 100 pounds.....	3¾ cents
Lumber and other Forest Products taking Lumber rates, wharfage and handling, per 100 pounds..... (1)	1¾ cents
Lumber, Wooden Poles, Wooden Piling, Wooden Ties, and Pulpwood, carloads, wharfage and handling, per 100 pounds. (Note B) .....	(2) 3½ cents
Lumber, Wooden Poles, Wooden Piling, Wooden Ties, and Pulpwood, (see Notes I and C), wharfage and handling, per 100 pounds..... (7)	1¾ cents
Logs (see Notes I and C), wharfage and handling, per 100 pounds .....	(2) 1 cent

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EXHIBIT No. ....

WITNESS: .....

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*Item 905-E—Effective 1 August 1943—Cont'd.*TABLE OF WHARFAGE, HANDLING OR TERMINAL CHARGES—  
Cont'd.

Note I.—In addition to the above wharfage and handling charges on lumber, not otherwise indexed by name in Official Classification, (including logs, wooden poles, wooden piling, wooden ties and Pulpwood), Domestic or Foreign, received direct from vessels to cars, or from piers to cars, or received from vessels by lighters or car floats, or received from intermediate storage, when loaded into or on cars for account of the line-haul carrier, the following charges will be assessed in addition to the freight charges, and will accrue to the line-haul carrier:

On traffic paying rate of 10 cents per 100 pounds or higher .....

On traffic paying rate of less than 10 cents per 100 pounds .....

LOADING CHARGE,  
Per ton 2,000 pounds

When loaded on open cars direct from vessels	When loaded on open cars or into closed cars from piers, intermediate storage or lighters
50 cents	100 cents
# 55 cents	(D) 100 cents

# Combined freight and loading charges not to exceed 12½ cents per 100 pounds or \$2.50 per ton 2,000 pounds.

(D) Combined freight and loading charges not to exceed 15 cents per 100 pounds or \$3.00 per ton 2,000 pounds.

Logs, carloads, wharfage and handling, per 100 pounds

(Note B) .....

Pig Iron, wharfage and handling, per ton 2,240 pounds....

All other freight, wharfage and handling, per 100 pounds. 1 cent

Note A.—On bulk grain, elevator charges lawfully on file with Interstate Commerce Commission will be in addition to the wharfage.

Note B.—Not applicable on shipments forwarded via Norfolk and Western Railway or The Virginian Railway.

Note C.—Applicable only on shipments forwarded via Norfolk and Western Railway or The Virginian Railway.

*Item 905-D—Effective 8 June 1942.*

Increased the charges in Note 1 for closed cars from 83¢ to \$1.00 and open cars from 39¢ to 50¢. No change in the 55¢ charge.

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EXHIBIT NO. ....

WITNESS: .....

PAGE NO. 41

*Item 905-C—Effective 1 December 1940.*

Change in wording was published which made neither increases nor reductions in charges.

*Item 905-B—Effective 15 March 1939.*

Charge on liquid caustic soda transferred to item 915-series.

*Item 905-A—Effective 14 January 1939.*

Established wharfage charge on liquid caustic soda which charge was later transferred to item 915-series.

*Item 905—Effective 22 September 1938.*

Increased the minimum line-haul rate shown in Note 1 to 10¢ (paragraph (a)) and 12¢ (paragraph (b)).

SECTION 3

APPLICATION OF RATES

*Item 910-E—Effective 1 August 1943.*

The wharfage, storage, handling or terminal charges shown in this section will apply on traffic to and from points shown in Group "C" on page 10 of Tariff.

TABLE OF WHARFAGE, HANDLING OR TERMINAL CHARGES

Fertilizer Materials, imported and shipped to Richmond and South Richmond, Va., wharfage and handling per ton 2,000 pounds .....	50 cents.
Freight in open top cars, except as otherwise shown, and tank cars, wharfage only, per 100 pounds .....	1 cent.
Import and inbound coastwise lumber and other forest products taking lumber rates and pulpwood when stowing in open top cars is required and freight is forwarded via Nor-	



folk & Western Railway, The Pennsylvania Railroad or  
The Virginian Railway:

Wharfage, per 100 pounds..... 1 cent.  
Handling, per 100 pounds (Note C)..... 2 cents.

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EXHIBIT No.....

WITNESS: .....

PAGE No. 42

*Item 910-E—Effective 1 August 1943—Cont'd.*

TABLE OF WHARFAGE, HANDLING OR TERMINAL CHARGES—  
Cont'd.

Grain in bulk, wharfage only per 100 pounds (Note A)..... 1 cent.  
Liquid Caustic Soda (Sodium hydroxide). (See Item 915-B).....  
Tobacco, unmanufactured, shipped from Richmond or South  
Richmond, Va., for export, (when moving on rates not  
subject to storage in transit privilege) or imported and  
shipped to Richmond or South Richmond, Va., wharfage  
and handling, per 100 pounds..... 2.1 cents.  
Sugar, imported or when received from Pacific Coast by  
water and shipped to Richmond or South Richmond, Va.,  
wharfage and handling per 100 pounds..... 2.75 cents.  
All other freight:  
Wharfage, per 100 pounds..... 1 cent  
Handling, per 100 pounds (Note C)..... 3 cents

Note A—On bulk grain, elevator charges, lawfully on file with Interstate  
Commerce Commission, will be in addition to the wharfage.

Note B—For absorption of wharfage and handling charges under this section  
which are made by the various roads, see Tariffs lawfully on file  
with Interstate Commerce Commission and Virginia State Corpora-  
tion Commission.

Note C—In addition to the above wharfage and  
handling charges on lumber, not otherwise index-  
ed by name in 'Official Classification, (including  
logs, wooden poles, wooden piling, wooden ties  
and pulpwood) Domestic or Foreign, received di-  
rect from vessels to cars, or from piers to cars,  
or received from vessels by lighters or car floats,  
or received from intermediate storage, when  
loaded into or on cars for account of the line-  
haul carrier, the following charges will be as-  
sessed in addition to the freight charges, and  
will accrue to the line-haul carrier:

LOADING CHARGE  
Per ton 2,000 pounds

	When loaded on open cars	When loaded or into closed cars from piers, inter- mediate stor- age or lighters
On traffic paying rate of 10 cents per 100 pounds or higher .....	50 cents	100 cents
On traffic paying rate of less than 10 cents per 100 pounds.....	# 55 cents	(D) 100 cents

# Combined freight and loading charges not to exceed 12½ cents per 100  
pounds or \$2.50 per ton 2,000 pounds.

(D) Combined freight and loading charges not to exceed 15 cents per 100  
pounds or \$3.00 per ton 2,000 pounds.



*Item 910-E—Effective 1 August 1943—Cont'd.*

- (1) Not applicable on Import and Inbound Coastwise Lumber, Logs, Wooden Poles, Wooden Piling, Wooden Ties and Pulpwood carloads.
- (2) Applicable only on Import and Inbound Coastwise traffic.
- (7) Not applicable on Export and Outbound Coastwise Lumber, Wooden Poles, Wooden Piling, Wooden Ties and Pulpwood, carloads.

*Item 910-D—Effective 8 June 1942.*

Increased the charges in Note 1 for closed cars from 83¢ to \$1.00 and open cars from 39¢ to 50¢. No change in the 55¢ charge.

Increased charge on import, coastwise and Pacific Coast woodpulp when to designated Virginia points from 1.65 cents per 100 pounds for wharfage and handling to 1¢ per 100 pounds wharfage and 3¢ per 100 pounds handling.

*Item 910-C—Effective 1 December 1940.*

Change in wording was published which made neither increases nor reductions in charges.

*Item 910-B—Effective 15 March 1939.*

Increased charges as follows:

Wharfage and handling on export tobacco, unmanufactured, from Richmond or South Richmond, Va., from 2¢ per 100 pounds to 2.1¢ per 100 pounds.

Wharfage and handling on import or Pacific Coast sugar when to Richmond or South Richmond, Va., from 2½¢ per 100 pounds to 2.75¢ per 100 pounds.

Wharfage and handling on import, coastwise and Pacific Coast woodpulp when to designated Virginia points from 1½¢ per 100 pounds to 1.65 cents per 100 pounds.

Charge on liquid caustic soda transferred to item 915-series.





EXHIBIT No. ....  
WITNESS: .....  
PAGE No. 44

*Item 910-A—Effective 14 January 1939.*

Establish wharfage charge on liquid caustic soda which charge was later transferred to item 915-series.

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*Item 910—Effective 22 September 1938.*

Increased the minimum line-haul rate shown in Note 1 to 10¢ (paragraph (a)) and 12¢ (paragraph (b)).

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EXHIBIT No. ....  
 WITNESS: .....  
 PAGE No. 45

EXHIBIT SHOWING THE NAMES OF TERMINAL OPERATORS  
 AT ARMY BASE PIERS, NORFOLK, VIRGINIA  
 WHO HAVE BEEN SHOWN IN TARIFFS OF THE FOLLOWING RAILROADS WITH REFERENCE TO WHARFAGE,  
 HANDLING AND TERMINAL SERVICES INCLUDED IN THE LINE-HAUL RATE AND ALLOWANCES THEREFOR.

NAME OF OPERATOR	NAME OF CARRIER, TARIFF AUTHORITY AND DATES WHEN OPERATOR WAS SHOWN IN TARIFF					
	N&W	NS	PRR	Southern	Virginian	N&PBL
Transport Trading & Terminal Corporation	From 1 July 1940 Until 15 Sept. 1942	From 1 July 1940 Until 18 Nov. 1943	From 1 July 1940 Until present	From 1 July 1940 Until present	From 1 July 1940 Until present	From 1 July 1940 Until present
	N&W ICC 8912	NS ICC A-1055	PRR ICC 2309	Sou ICC A-11013	Vgn ICC 2084	N&PBL ICC 405
	N&W ICC 9101	NS ICC A-1148	PRR ICC 2508	Sou ICC A-10937	Vgn ICC 2196	
				Sou ICC A-10921		
				Sou ICC A-10892		
				Sou ICC A-10715		
Norfolk Tidewater Terminals, Inc.	From 20 Feb. 1926 Until 1 July 1940	From 25 Feb. 1926 Until 1 July 1940	From 15 Jan. 1926 Until 1 July 1940	From 22 May 1929 Until 1 July 1940	From 22 Dec. 1925 Until 1 July 1940	From 22 Dec. 1925 Until 1 July 1940
	N&W ICC 7604	NS ICC A-25	PRR ICC			
			No. G.O. 14382	Sou ICC A-8699	Vgn ICC 1716	N&PBL ICC 78
	N&W ICC 8188	NS ICC A-523	PRR ICC	Sou ICC A-10622	Vgn ICC 1719	N&PBL ICC 86
			No. G.O. 14483	Sou ICC A-10715	Vgn ICC 1721	N&PBL ICC 92
	N&W ICC 8783	NS ICC A-938	PRR ICC 34		Vgn ICC 1725	N&PBL ICC 98
	N&W ICC 8912	NS ICC A-1055	PRR ICC 447		Vgn ICC 1762	N&PBL ICC 103
			PRR ICC 750		Vgn ICC 1826	
			PRR ICC 1149		Vgn ICC 1994	N&PBL ICC 105
			PRR ICC 1490		Vgn ICC 2052	
			PRR ICC 1910		Vgn ICC 2084	
			PRR ICC 2309			

EXHIBIT No. ....  
 WITNESS: .....  
 PAGE No. 46

NAME OF OPERATOR	NAME OF CARRIER, TARIFF AUTHORITY AND DATES WHEN OPERATOR WAS SHOWN IN TARIFF					
	N&W	NS	PRR	Southern	Virginian	N&PBL
Municipal Terminals	From 7 April 1921 Until 15 Nov. 1927	From 4 Nov. 1921 Until 25 Feb. 1926	From 15 April 1921 Until 15 Jan. 1926	From 25 Aug. 1921 Until 26 Dec. 1935	From 7 April 1921 Until 22 Dec. 1925	From 1 July 1923 Until 22 Dec. 1925
	N&W ICC 6789	NS ICC A-25	NYP&N ICC 3328	Sou ICC A-8699	Vgn ICC 1449	N&PBL ICC 69
	N&W ICC 7020		PRR ICC		Vgn ICC 1465	
	N&W ICC 7604		No. G.O. 11713		Vgn ICC 1536	
			PRR ICC		Vgn ICC 1599	
			No. G.O. 14285		Vgn ICC 1606	
					Vgn ICC 1688	



Statement of Class Rates and Distances Between 106 Base Points Resulting from I. C. C. Docket 15879  
and the Ports of New York, Philadelphia, Baltimore, Albany, Norfolk and Boston Rates in Cents

Item	AND	Miles	NEW YORK, N. Y.						PHILADELPHIA, PA.						BALTIMORE, MD.						ALBANY, N. Y.						
			CLASSES						CLASSES						CLASSES						CLASSES						
			1	2	3	4	5	6	1	2	3	4	5	6	1	2	3	4	5	6	1	2	3	4	5	6	
1	Akron, Ohio	550	128	169	90	64	45	35	118	100	83	59	41	32	429	112	95	78	56	39	31	499	120	102	84	60	42
2	Domestic		120	103	81	59	42	34	114	97	79	57	40	32		112	95	78	56	39	31		114	97	79	57	40
3	Import, Intercoastal and Coastwise		115	98	81	59	42	34	113	96	79	57	40	32		112	95	78	56	39	31		113	96	79	57	40
4	Export, Intercoastal and Coastwise														815	166	141	116	83	58	46	698	162	129	106	76	55
5	Albany, Mich.	811	166	141	116	83	58	46	166	141	116	83	58	46		158	133	113	80	55	43		152	129	106	76	55
6	Domestic		166	141	116	83	58	46	166	141	116	83	58	46		163	138	113	80	55	43		152	129	106	76	55
7	Import, Intercoastal and Coastwise														593	133	113	93	67	47	37	559	130	111	91	65	44
8	Export, Intercoastal and Coastwise															133	113	93	67	47	36		130	111	91	65	44
9	Ann Arbor, Mich.	668	141	121	96	70	50	39	135	115	84	68	48	37		133	113	93	67	47	36		130	111	91	65	44
10	Domestic		136	116	96	70	50	39	134	114	94	68	48	37		133	113	93	67	47	36		130	111	91	65	44
11	Import, Intercoastal and Coastwise														429	112	95	78	56	39	31	414	109	93	76	55	38
12	Export, Intercoastal and Coastwise															110	93	77	55	38	30		109	93	76	55	38
13	Ashtabula, Ohio	513	114	97	80	58	41	33	112	95	78	56	39	31		111	94	77	55	38	39		109	93	76	55	38
14	Domestic														800	158	134	111	79	55	43	825	156	133	109	78	55
15	Import, Intercoastal and Coastwise															158	134	111	79	55	43		156	133	109	78	55
16	Export, Intercoastal and Coastwise															158	134	111	79	55	43		156	133	109	78	55
17	Aurora, Ill.	923	171	145	120	86	60	47	164	139	115	82	57	45		158	134	111	79	55	43	662	144	122	101	72	50
18	Domestic		166	142	114	82	58	46	160	136	112	80	56	44		158	134	111	79	55	43		144	122	101	72	50
19	Import, Intercoastal and Coastwise		161	137	114	82	58	46	159	135	112	80	56	44		158	134	111	79	55	43		144	122	101	72	50
20	Export, Intercoastal and Coastwise														748	155	132	109	78	54	43	872	144	122	101	72	50
21	Big Rapids, Mich.	775	158	134	111	79	55	43	152	128	109	77	53	41		150	126	108	76	52	40		144	122	101	72	50
22	Domestic		158	134	111	79	55	43	152	128	109	77	53	41		155	131	108	76	52	40		144	122	101	72	50
23	Import, Intercoastal and Coastwise														815	158	134	111	79	55	43	872	144	122	101	72	50
24	Export, Intercoastal and Coastwise															158	134	111	79	55	43		144	122	101	72	50
25	Bloomington, Ill.	957	174	148	122	87	61	48	166	141	116	83	58	46		158	134	111	79	55	43	804	153	130	107	77	54
26	Domestic		166	142	114	82	58	46	160	136	112	80	56	44		158	134	111	79	55	43		148	126	103	74	51
27	Import, Intercoastal and Coastwise		161	137	114	82	58	46	159	135	112	80	56	44		158	134	111	79	55	43		147	125	103	74	51
28	Export, Intercoastal and Coastwise														699	146	124	102	73	51	40	804	148	126	103	74	51
29	Bloomington, Ind.	848	162	138	113	81	57	45	155	132	109	78	54	43		146	124	102	73	51	40		153	130	107	77	54
30	Domestic		154	132	105	76	54	43	148	126	103	74	52	41		146	124	102	73	51	40		148	126	103	74	51
31	Import, Intercoastal and Coastwise		149	127	105	76	54	43	147	125	103	74	52	41		146	124	102	73	51	40		147	125	103	74	51
32	Export, Intercoastal and Coastwise														941	174	148	122	87	61	48	984	177	150	124	89	62
33	Burlington, Iowa	1073	188	160	132	94	66	52	180	153	126	90	63	50		174	148	122	87	61	48		176	150	123	88	61
34	Domestic		182	156	125	90	64	51	176	150	123	88	62	49		174	148	122	87	61	48		176	150	123	88	61
35	Import, Intercoastal and Coastwise		177	151	125	90	64	51	175	149	123	88	62	49		174	148	122	87	61	48		175	149	123	88	61
36	Export, Intercoastal and Coastwise														775	161	137	113	81	56	44	668	146	124	102	73	51
37	Cadillac, Mich.	781	161	137	113	81	56	44	161	137	113	81	56	44		153	129	110	78	53	41		146	124	102	73	51
38	Domestic		161	137	113	81	56	44	155	131	111	79	54	42		158	134	110	78	53	41		146	124	102	73	51
39	Import, Intercoastal and Coastwise		161	137	113	81	56	44	159	135	111	79	54	43		158	134	110	78	53	41		146	124	102	73	51
40	Export, Intercoastal and Coastwise														907	172	146	120	86	60	47	1026	182	155	127	91	64
41	Cairo, Ill.	1071	189	161	132	95	66	52	182	155	127	91	64	50		172	146	120	86	60	47		174	148	121	87	61
42	Domestic		180	154	123	89	63	50	174	148	121	87	61	48		172	146	120	86	60	47		173	147	121	87	61
43	Import, Intercoastal and Coastwise		175	149	123	89	63	50	173	147	121	87	61	48		172	146	120	86	60	47		173	147	121	87	61
44	Export, Intercoastal and Coastwise														411	109	93	76	55	38	30	676	129	110	90	65	44
45	Cambridge, Ohio	549	119	101	83	60	42	33	119	101	83	60	42	33		109	93	76	55	38	30		111	95	77	56	44
46	Domestic		117	101	79	58	41	33	110	95	77	56	39	31		109	93	76	55	38	30		110	94	77	56	44
47	Import, Intercoastal and Coastwise		112	95	78	56	39	31	110	94	77	55	38	30		109	93	76	55	38	30		110	94	77	56	44
48	Export, Intercoastal and Coastwise														413	109	93	76	55	38	30	507	120	102	84	60	42
49	Canton, Ohio	536	124	105	87	62	43	34	114	97	80	57	40	31		109	93	76	55	38	30		111	95	77	56	44
50	Domestic		117	101	79	58	41	33	111	95	77	56	39	31		109	93	76	55	38	30		111	95	77	56	44
51	Import, Intercoastal and Coastwise		112	96	79	58	41	33	110	94	77	55	38	30		109	93	76	55	38	30		110	94	77	56	44
52	Export, Intercoastal and Coastwise														841	163	139	114	82	57	45	942	161	145	120	86	61
53	Centralia, Ill.	992	180	153	126	90	63	50	173	147	121	87	61	48		163	139	114	82	57	45		165	141	115	83	58
54	Domestic		171	147	117	85	60	48	165	141	115	83	58	46		163	139	114	82	57	45		164	140	115	83	58
55	Import, Intercoastal and Coastwise		166	142	117	85	60	48	16																		







Item	BETWEEN AND	Miles	NEW YORK, N. Y.						Miles	PHILADELPHIA, PA.						Miles	BALTIMORE, MD.						Miles	ALBANY, N. Y.						Miles	NORFOLK, VA.						Miles	BOSTON, MASS.					
			1	2	3	4	5	6		1	2	3	4	5	6		1	2	3	4	5	6		1	2	3	4	5	6		1	2	3	4	5	6		1	2	3	4	5	6
1	Evansville, Ind.	951	176	150	123	88	62	48	871	166	141	116	83	58	46	787	158	134	111	79	55	43	918	167	142	117	84	58	46	884	163	139	114	82	57	45	1102	184	156	129	92	64	51
2	Domestic		166	142	114	82	58	46		160	136	112	80	56	44		158	134	111	79	55	43		160	136	112	80	56	44		158	134	111	79	55	43		166	142	114	82	58	46
3	Import, Intercoastal and Coastwise		161	137	111	82	58	46		159	135	112	80	56	44		158	134	111	79	55	43		159	135	112	80	56	44		158	134	111	79	55	43		161	137	111	82	58	46
4	Export, Intercoastal and Coastwise		161	137	111	82	58	46		159	135	112	80	56	44		158	134	111	79	55	43		159	135	112	80	56	44		158	134	111	79	55	43		161	137	111	82	58	46
5	Flint, Mich.	657	142	121	99	71	50	39	663	140	119	98	70	49	39	650	140	119	98	70	49	39	663	140	119	98	70	49	39	650	140	119	98	70	49	39	842	145	123	102	73	51	40
6	Domestic		142	121	99	71	50	39		136	115	97	69	48	37		134	113	96	68	47	36		136	115	97	69	48	37		134	113	96	68	47	36		142	121	99	71	50	39
7	Import, Intercoastal and Coastwise		142	121	99	71	50	39		140	119	97	69	48	37		139	118	96	68	47	36		140	119	97	69	48	37		139	118	96	68	47	36		142	121	99	71	50	39
8	Export, Intercoastal and Coastwise		142	121	99	71	50	39		140	119	97	69	48	37		139	118	96	68	47	36		140	119	97	69	48	37		139	118	96	68	47	36		142	121	99	71	50	39
9	Flora, Ill.	966	176	150	123	88	62	48	886	168	143	118	84	59	46	802	158	134	111	79	55	43	921	167	142	117	84	58	46	900	167	142	117	84	58	46	1105	184	156	129	92	64	51
10	Domestic		166	142	114	82	58	46		160	136	112	80	56	44		158	134	111	79	55	43		160	136	112	80	56	44		158	134	111	79	55	43		166	142	114	82	58	46
11	Import, Intercoastal and Coastwise		161	137	111	82	58	46		159	135	112	80	56	44		158	134	111	79	55	43		159	135	112	80	56	44		158	134	111	79	55	43		161	137	111	82	58	46
12	Export, Intercoastal and Coastwise		161	137	111	82	58	46		159	135	112	80	56	44		158	134	111	79	55	43		159	135	112	80	56	44		158	134	111	79	55	43		161	137	111	82	58	46
13	Forrest, Ill.	924	171	145	120	86	60	47	848	163	139	114	82	57	45	784	156	133	109	78	55	43	831	160	136	112	80	56	44	912	167	142	117	84	58	46	1013	176	150	123	88	62	48
14	Domestic		171	145	120	86	60	47		158	135	110	79	56	44		156	133	109	78	55	43		158	135	110	79	56	44		156	133	109	78	55	43		164	141	112	81	58	46
15	Import, Intercoastal and Coastwise		164	141	112	81	58	46		157	134	110	79	56	44		156	133	109	78	55	43		157	134	110	79	56	44		156	133	109	78	55	43		164	141	112	81	58	46
16	Export, Intercoastal and Coastwise		159	136	112	81	58	46		157	134	110	79	56	44		156	133	109	78	55	43		157	134	110	79	56	44		156	133	109	78	55	43		159	136	112	81	58	46
17	Fort Wayne, Ind.	744	152	129	106	76	53	42	668	143	122	100	72	50	39	621	135	115	95	68	47	37	655	138	117	97	69	48	38	778	155	132	109	78	54	43	839	154	131	108	77	54	42
18	Domestic		143	123	98	71	50	40		137	117	96	69	48	38		135	115	95	68	47	37		137	117	96	69	48	38		135	115	95	68	47	37		143	123	98	71	50	40
19	Import, Intercoastal and Coastwise		138	118	98	71	50	40		136	116	96	69	48	38		135	115	95	68	47	37		136	116	96	69	48	38		135	115	95	68	47	37		138	118	98	71	50	40
20	Export, Intercoastal and Coastwise		138	118	98	71	50	40		136	116	96	69	48	38		135	115	95	68	47	37		136	116	96	69	48	38		135	115	95	68	47	37		138	118	98	71	50	40
21	Fostoria, Ohio	954	138	117	97	69	48	38	578	130	111	91	65	46	36	531	125	106	88	63	44	34	565	123	111	91	65	46	36	578	130	111	91	65	46	36	749	142	122	100	72	50	39
22	Domestic		133	114	91	66	47	37		127	108	89	64	45	35		125	106	88	63	44	34		123	111	91	66	47	37		126	107	89	64	45	35		133	114	91	66	47	37
23	Import, Intercoastal and Coastwise		128	109	91	66	47	37		126	107	89	64	45	35		125	106	88	63	44	34		123	111	91	66	47	37		126	107	89	64	45	35		128	109	91	66	47	37
24	Export, Intercoastal and Coastwise		128	109	91	66	47	37		126	107	89	64	45	35		125	10																									



Item	AND	Miles	NEW YORK, N. Y.						Miles	PHILADELPHIA, PA.						Miles	BALTIMORE, MD.						Miles	ALBANY, N. Y.						Miles	NORFOLK, VA.						Miles	BOSTON, MASS.						
			CLASSES							CLASSES							CLASSES							CLASSES							CLASSES							CLASSES						
			1	2	3	4	5	6		1	2	3	4	5	6		1	2	3	4	5	6		1	2	3	4	5	6		1	2	3	4	5	6		1	2	3	4	5	6	
1	Kalamazoo	Mich.	774	154	131	108	77	54	42	730	147	125	103	74	51	40	683	143	122	100	72	50	39	661	138	117	97	69	48	38	870	163	139	114	82	57	45	845	155	132	109	78	54	43
2	Domestic			151	130	103	75	53	42		145	124	101	73	51	40		143	122	100	72	50	39		138	117	97	69	48	38		143	122	100	72	50	39		151	129	103	75	53	42
3	Import, Intercoastal and Coastwise			146	125	103	75	53	42		141	123	101	73	51	40		143	122	100	72	50	39		138	117	97	69	48	38		143	122	100	72	50	39		146	125	103	75	53	42
4	Export, Intercoastal and Coastwise																																											
5	La Fayette	Ind.	841	162	138	113	81	57	45	865	155	132	109	78	54	43	699	146	124	102	73	51	40	764	151	128	106	76	53	42	828	160	136	112	80	57	45	948	167	142	117	84	58	46
6	Domestic			154	132	105	76	54	43		148	126	103	74	52	41		146	124	102	73	51	40		148	126	103	74	52	41		146	124	102	73	51	40		154	132	105	76	54	43
7	Import, Intercoastal and Coastwise			149	127	105	76	54	43		147	125	103	74	52	41		146	124	102	73	51	40		147	125	103	74	52	41		146	124	102	73	51	40		149	127	105	76	54	43
8	Export, Intercoastal and Coastwise																																											
9	Lansing	Mich.	707	145	124	102	73	51	40	701	144	122	101	72	50	40	654	139	118	97	70	49	38	594	133	113	93	67	47	37	846	163	139	114	82	57	45	978	151	128	106	76	53	42
10	Domestic			145	124	100	73	51	40		140	118	98	71	49	38		138	116	97	70	48	37		133	113	93	67	47	37		138	116	97	70	48	37		146	124	100	73	51	40
11	Import, Intercoastal and Coastwise			142	121	100	73	51	40		140	119	98	71	49	38		139	118	97	70	48	37		133	113	93	67	47	37		139	118	97	70	48	37		146	124	102	73	51	40
12	Export, Intercoastal and Coastwise																																											
13	Lexington	Ky.	790	163	139	114	82	57	45	710	154	131	108	77	54	42	618	142	121	99	71	50	39	502	163	139	114	82	57	45	643	147	125	103	74	51	40	1017	182	155	127	91	64	50
14	Domestic			150	129	102	74	53	42		144	123	100	72	51	40		142	121	99	71	50	39		144	123	100	72	51	40		144	123	100	72	51	40		150	129	102	74	53	42
15	Import, Intercoastal and Coastwise			145	124	102	74	53	42		143	122	100	72	51	40		142	121	99	71	50	39		143	122	100	72	51	40		142	121	99	71	50	39		145	124	102	74	53	42
16	Export, Intercoastal and Coastwise																																											
17	Lima	Ohio	694	145	123	102	73	51	40	618	136	116	95	68	48	37	566	125	106	88	63	44	34	611	132	113	93	67	47	37	719	147	125	103	74	51	40	795	150	128	105	75	53	42
18	Domestic			133	114	91	66	47	37		127	108	89	64	45	35		125	106	88	63	44	34		127	108	89	64	45	35		125	106	88	63	44	34		133	114	91	66	47	37
19	Import, Intercoastal and Coastwise			128	109	91	66	47	37		126	107	89	64	45	35		125	106	88	63	44	34		126	107	89	64	45	35		126	107	89	64	45	35		128	109	91	66	47	37
20	Export, Intercoastal and Coastwise																																											
21	Litchfield	Ill.	1006	180	153	126	90	63	50	930	173	147	121	87	61	48	857	165	140	116	83	58	45	945	171	145	120	86	60	47	974	174	148	122	87	61	48	1129	187	159	131	94	65	50
22	Domestic			173	148	119	86	61	48		167	142	117	84	59	46		165	140	116	83	58	45		165	140	116	83	58	45		165	140	116	83	58	45		173	148	119	86	61	48
23	Import, Intercoastal and Coastwise			168	143	119	86	61	48		166	141	117	84	59	46		165	140	116	83	58	45		166	141	117	84	59	46		166	141	117	84	59	46		168	143	119	86	61	48
24	Export, Intercoastal and Coastwise																																											
25	Logan	Ohio	594	132	112	92	66	46	36	514	123	105	86	62	43	34	430	111	94	78	56	39	31	652	135	115	95	68	47	37	583	130	111	91	65	46	36	821	153	130	107	77	54	43
26	Domestic			119	102	81	59	42	34		113	96	79	57	40	32		111	94	78	56	39	31		113	96	79	57	40	32		111	94	78	56	39	31		119	102	81	59	42	34
27	Import, Intercoastal and Coastwise			114	97	81	59	42	34		112	95	79	57	40	32		111	94	78	56	39	31		112	95	79	57	40	32		111	94	78	56	39	31		114	97	81	59	42	34
28	Export, Intercoastal and Coastwise																																											
29	Logansport	Ind.	816	156	133	109	78	55	43	740	149	127	104	75	52	41	677	142	121	99	71	50	39	727	145	123	102	73	51	40	806	149	127	104	75	52	41	911	162	138	113	81	57	44
30	Domestic			150	129	102	74	53	42		144	123	100	72	51	40		142	121	99	71	50	39		144	123	100	72	51	40		144	123	100	72	51	40		150	129	102	74	53	42
31	Import, Intercoastal and Coastwise			145	124	102	74	53	42		143	122	100	72	51	40		142	121	99	71	50	39		143	122	100	72	51	40		143	122	100	72	51	40		145	124	102	74	53	42
32	Export, Intercoastal and Coastwise																																											
33	Louisville	Ky.	836	164	139	115	82	57	45	772	154	131	108	77	54	42	688	145	123	102	73	51	40	826	157	133	110	79	55	43	886	145	123	102	73	51	40	1010	174	148	122	87	61	48
34	Domestic			153	131	105	76	54	43		147	125	103	74	52	41		145	123	102	73	51	40		147	125	103	74	52	41		145	123	102	73	51	40		153	131	105	76	54	43
35	Import, Intercoastal and Coastwise			148	126	105	76	54	43		146	124	103	74	52	41		145	123	102	73	51	40		146	124	103	74	52	41		146	124	103	74	52	41		148	126	105	76	54	43
36	Export, Intercoastal and Coastwise																																											
37	Ludington	Mich.	820	165	140	116	83	58	45	826	165	140	116	83	58	45	809	162	138	113	81	57	45	1001	182	155	127	91	64	50	707	151	128	106	76	53	42	891	168	143	118	84	59	46
38	Domestic			165	140	116	83	58	45		159	134	114	81	56	43		157	132	113	80	55	42		157	132	113	80	55	42		157	132	113	80	55	42		165	140	116	83	58	45
39	Import, Intercoastal and Coastwise			165	140	116	83	58	45		163	138	114	81	56	43		162	137	113	80	55	42		162	137	113	80	55	42		162	137	113	80	55	42		165	140	116	83	58	45
40	Export, Intercoastal and Coastwise																																											
41	Manistique	Mich.	915	182	155	127	91	64	50	951	182	155	127	91	64	50	940	182	155	127	91	64	50	951	182	155	127	91	64	50	940	182	155	127	91	64	50	1017						



Item	AND	Miles	NEW YORK, N. Y.						PHILADELPHIA, PA.						BALTIMORE, MD.						ALBANY, N. Y.						PHILADELPHIA, PA.						BALTIMORE, MD.						ALBANY, N. Y.						NORFOLK, VA.						BOSTON, MASS.												
			CLASSES						CLASSES						CLASSES						CLASSES						CLASSES						CLASSES						CLASSES						CLASSES						CLASSES												
			1	2	3	4	5	6	1	2	3	4	5	6	1	2	3	4	5	6	1	2	3	4	5	6	1	2	3	4	5	6	1	2	3	4	5	6	1	2	3	4	5	6	1	2	3	4	5	6													
1	Milwaukee	881	167	142	117	84	58	46	166	141	116	83	58	46	831	161	137	113	81	56	44	153	130	107	77	58	46	878	166	141	116	83	58	46	831	161	137	113	81	56	44	769	153	130	107	77	58	46	999	176	150	123	88	62	48	953	169	144	118	85	59	46	46
2	Domestic		167	142	116	84	58	46	161	136	114	82	56	44		159	134	113	81	55	43	153	129	107	77	58	46		161	136	114	82	56	44		159	134	113	81	55	43		153	130	107	77	54	42		159	134	113	81	55	43		167	142	116	84	58	46	46
3	Import, Intercoastal and Coastwise		164	140	116	84	58	46	162	138	114	82	56	44		161	137	113	81	55	43	153	130	107	77	58	46		162	138	114	82	56	44		161	137	113	81	55	43		153	130	107	77	54	42		161	137	113	81	55	43		164	140	116	84	58	46	46
4	Export, Intercoastal and Coastwise		174	148	122	87	61	48	165	140	116	83	58	45		156	133	109	78	55	43	164	139	115	82	57	45		156	133	109	78	55	43		156	133	109	78	55	43		164	139	115	82	57	45		180	153	126	90	63	50	50							
5	Domestic		164	141	112	81	58	46	158	135	110	79	56	44		156	133	109	78	55	43	158	135	110	79	56	44		158	135	110	79	56	44		156	133	109	78	55	43		156	133	109	78	55	43		164	141	112	81	58	46	46							
6	Import, Intercoastal and Coastwise		159	136	112	81	58	46	157	134	110	79	56	44		156	133	109	78	55	43	157	134	110	79	56	44		156	133	109	78	55	43		157	134	110	79	56	44		156	133	109	78	55	43		159	136	112	81	58	46	46							
7	Export, Intercoastal and Coastwise		152	129	106	76	53	42	143	122	100	72	50	39		135	115	95	68	47	37	143	122	100	72	50	39		143	122	100	72	50	39		143	122	100	72	50	39		143	122	100	72	50	39		160	136	112	80	56	44	44							
8	Domestic		143	122	98	71	50	40	137	117	96	69	48	38		135	115	95	68	47	37	137	117	96	69	48	38		137	117	96	69	48	38		137	117	96	69	48	38		135	115	95	68	47	37		143	122	98	71	50	40	40							
9	Import, Intercoastal and Coastwise		138	118	98	71	50	40	136	116	96	69	48	38		135	115	95	68	47	37	136	116	96	69	48	38		136	116	96	69	48	38		135	115	95	68	47	37		136	116	96	69	48	38		138	118	98	71	50	40	40							
10	Export, Intercoastal and Coastwise		158	134	111	79	55	43	154	131	108	77	54	42		149	127	104	75	52	41	144	122	101	72	55	43		149	127	104	75	52	41		144	122	101	72	50	40		144	122	101	72	50	40		169	144	118	85	59	46	46							
11	Domestic		157	134	107	78	55	43	151	128	105	76	53	41		149	126	104	75	52	40	144	122	101	72	55	43		151	128	105	76	53	41		149	126	104	75	52	40		144	122	101	72	50	40		157	134	107	78	55	43	43							
12	Import, Intercoastal and Coastwise		152	130	107	78	55	43	150	128	105	76	53	41		149	127	104	75	52	40	144	122	101	72	55	43		150	128	105	76	53	41		149	127	104	75	52	40		144	122	101	72	50	40		152	130	107	78	55	43	43							
13	Export, Intercoastal and Coastwise		132	112	92	66	46	36	123	105	86	62	43	34		113	96	79	57	40	31	130	111	91	65	46	36		123	105	86	62	43	34		113	96	79	57	40	31		130	111	91	65	46	36		135	115	95	68	47	37	781							
14	Domestic		121	104	82	60	43	34	115	98	80	58	41	32		113	96	79	57	40	31	115	98	80	58	41	32		113	96	79	57	40	31		113	96	79	57	40	31		115	98	80	58	41	32		121	104	82	60	43	34	34							
15	Import, Intercoastal and Coastwise		116	99	82	60	43	34	114	97	80	58	41	32		113	96	79	57	40	31	114	97	80	58	41	32		113	96	79	57	40	31		114	97	80	58	41	32		117	99	82	59	41	32		116	99	82	60	43	34	34							
16	Export, Intercoastal and Coastwise		157	133	110	79	55	43	147	125	103	74	51	40		138	117	97	69	48	38	152	129	106	76	53	42		147	125	103	74	51	40		138	117	97	69	48	38		152	129	106	76	53	42	954														
17	Domestic		146	125	100	72	51	41	140	119	98	70	49	39		138	117	97	69	48	38	140	119	98	70	49	39		140	119	98	70	49	39		138	117	97	69	48	38		140	119	98	70	49	39		146	125	100	72	51	41	41							
18	Import, Intercoastal and Coastwise		141	120	100	72	51	41	139	118	98	70	49	39		138	117	97	69	48	38	139	118	98	70	49	39		138	117	97	69	48	38		139	118	98	70	49	39		138	117	97	69	48	38		141	120	100	72	51	41	41							
19	Export, Intercoastal and Coastwise		176	150	123	88	62	48	168	143	118	84	59	46		161	137	113	81	56	44	166	141	116	83	58	46		161	137	113	81	56	44		166	141	116	83	58	46		169	144	118	85	59	46		184	156	129	92	64	51	51							
20	Domestic		169	145	116	84	59	47	163	139	114	82	57	45		161	137	113	81	56	44	163	139	114	82	57	45		163	139	114	82	57	45		163	139	114	82	57	45		161	137	113	81	56	44		169	145	116	84	59	47	47							
21	Import, Intercoastal and Coastwise		164	140	116	84	59	47	162	138	114	82	57	45		161	137	113	81	56	44	162	138	114	82	57	45		162	138	114	82	57	45		162	138	114	82	57	45		161	137	113	81	56	44		164	140	116	84	59	47	47							
22	Export, Intercoastal and Coastwise		125	106	88	63	44	34	114	97	80	57	40	31		101	86	71	51	35	28	135	115	95	68	47	37		114	97	80	57	40	31		101	86	71	51	35	28		135	115	95	68	47	37		128	109	90	64	45	35	35							
23	Domestic		109	94	74	54	38	31	103	88	72	52	36	29		101	86	71	51	35	28	103	88	72	52	36	29		102	88	72	52	36	29		101	86	71	51	35	28		103	88	72	52	36	29		109	94	74	54	38	31	31							
24	Import, Intercoastal and Coastwise		109	94	74	54	38	31	103	88	72	52	36	29		101	86	71	51	35	28	103	88	72	52	36	29		103	88	72	52	36	29		101	86	71	51	35	28		103	88	72	52	36	29		109	94	74	54	38	31	31							
25	Export, Intercoastal and Coastwise		178	151	125	89	62	49	171	145	120	86	60	47		163	139	114	82	57	45	165	140	116	83	58	46		171	145	120	86	60	47		163	139	114	82	57	45		165	140	116	83	58	46		174	148	122	87	61	48	50							
26	Domestic		171	147	117	85	60	48	165	141	115	83	58	46		163	139	114	82	57	45	165	141	115	83	58	46		165	141	115	83	58	46		163	139	114	82	57	45		165	141	115	83	58	46		171	147	117	85	60	48	48							
27	Import, Intercoastal and Coastwise		166	142	117	85	60	48	164	140	115	83	58	46		163	139	114	82	57	45	164	140	115	83	58	46		164	140	115	83	58	46		163	139	114	82	57	45		164	140	115	83	58	46		166	142	117	85	60	48	48							
28	Export, Intercoastal and Coastwise		125	106	88	63	44	34	118	100	83	59	41	32		112	95	78	56	39	31	112	95	78	56	39	31		112	95	78	56	39	31		112	95	78	56	39	31		112	95	78	56	39	31		135	115	95	68	47	37	624							
29	Domestic		120	103	81	59	42	34	114	97	79	57	40	32		112	95	78	56	39	31	112	95	78	56	39	31		112	95	78	56	39	31		112	95																										



Item	AND	BETWEEN	NEW YORK, N. Y.						PHILADELPHIA, PA.						BALTIMORE, MD.						ALBANY, N. Y.						PHILADELPHIA, PA.						BALTIMORE, MD.						ALBANY, N. Y.						NORFOLK, VA.						BOSTON, MASS.							
			CLASSES						CLASSES						CLASSES						CLASSES						CLASSES						CLASSES						CLASSES						CLASSES						CLASSES							
			Miles	1	2	3	4	5	6	Miles	1	2	3	4	5	6	Miles	1	2	3	4	5	6	Miles	1	2	3	4	5	6	Miles	1	2	3	4	5	6	Miles	1	2	3	4	5	6	Miles	1	2	3	4	5	6	Miles	1	2	3	4	5	6
1	Richmond	Ind.	731	150	128	105	75	53	41	655	142	121	99	71	50	39	582	131	111	92	66	46	36	687	142	121	99	71	50	39	582	131	111	92	66	46	36	687	142	121	99	71	50	39	707	144	122	101	72	50	40	871	160	136	112	80	56	44
2	Domestic			139	119	95	69	49	39		133	113	93	67	47	37		131	111	92	66	46	36		133	113	93	67	47	37		131	111	92	66	46	36		133	113	93	67	47	37		131	111	92	66	46	36		133	113	93	67	47	37
3	Import, Intercoastal and Coastwise			134	114	95	69	49	39		132	112	93	67	47	37		131	111	92	66	46	36		132	112	93	67	47	37		131	111	92	66	46	36		132	112	93	67	47	37		131	111	92	66	46	36		133	113	93	67	47	37
4	Export, Intercoastal and Coastwise			134	114	95	69	49	39		132	112	93	67	47	37		131	111	92	66	46	36		132	112	93	67	47	37		131	111	92	66	46	36		132	112	93	67	47	37		131	111	92	66	46	36		133	113	93	67	47	37
5	Rockford	Ill.	974	176	150	123	88	62	48	898	168	143	118	84	59	46	851	163	139	114	82	57	45	865	162	138	113	81	57	45	851	163	139	114	82	57	45	865	162	138	113	81	57	45	999	177	150	124	89	62	49	1050	178	151	125	89	62	49
6	Domestic			171	147	117	85	60	48		165	141	115	83	58	45		163	139	114	82	57	45		162	138	113	81	57	45		163	139	114	82	57	45		162	138	113	81	57	45		163	139	114	82	57	45		171	147	117	85	60	48
7	Import, Intercoastal and Coastwise			166	142	117	85	60	48		164	140	115	83	58	45		163	139	114	82	57	45		162	138	113	81	57	45		163	139	114	82	57	45		162	138	113	81	57	45		163	139	114	82	57	45		171	147	117	85	60	48
8	Export, Intercoastal and Coastwise			166	142	117	85	60	48		164	140	115	83	58	45		163	139	114	82	57	45		162	138	113	81	57	45		163	139	114	82	57	45		162	138	113	81	57	45		163	139	114	82	57	45		171	147	117	85	60	48
9	Roodhouse	Ill.	1038	184	156	129	92	64	51	962	176	150	123	88	62	48	888	168	143	118	84	59	46	969	175	149	123	88	62	48	888	168	143	118	84	59	46	969	175	149	123	88	62	48	1005	177	150	124	89	62	49	1153	191	162	134	96	67	53
10	Domestic			176	151	121	87	62	49		170	145	119	85	60	47		168	143	118	84	59	46		170	145	119	85	60	47		168	143	118	84	59	46		170	145	119	85	60	47		168	143	118	84	59	46		176	151	121	87	62	49
11	Import, Intercoastal and Coastwise			171	146	121	87	62	49		169	144	119	85	60	47		168	143	118	84	59	46		169	144	119	85	60	47		168	143	118	84	59	46		169	144	119	85	60	47		168	143	118	84	59	46		171	146	121	87	62	49
12	Export, Intercoastal and Coastwise			171	146	121	87	62	49		169	144	119	85	60	47		168	143	118	84	59	46		169	144	119	85	60	47		168	143	118	84	59	46		169	144	119	85	60	47		168	143	118	84	59	46		171	146	121	87	62	49
13	Saginaw	Mich.	682	144	122	101	72	50	40	688	144	122	101	72	50	40	683	144	122	101	72	50	40	569	144	122	101	72	50	40	683	144	122	101	72	50	40	569	144	122	101	72	50	40	875	165	140	116	83	58	45	753	149	127	104	75	52	41
14	Domestic			144	122	101	72	50	40		138	116	99	70	48	38		136	114	98	69	47	37		131	111	92	66	46	36		136	114	98	69	47	37		131	111	92	66	46	36		136	114	98	69	47	37		144	122	101	72	50	40
15	Import, Intercoastal and Coastwise			144	122	101	72	50	40		142	120	99	70	48	38		141	119	98	69	47	37		131	111	92	66	46	36		142	120	99	70	48	38		141	119	98	69	47	37		144	122	101	72	50	40		144	122	101	72	50	40
16	Export, Intercoastal and Coastwise			144	122	101	72	50	40		142	120	99	70	48	38		141	119	98	69	47	37		131	111	92	66	46	36		142	120	99	70	48	38		141	119	98	69	47	37		144	122	101	72	50	40		144	122	101	72	50	40
17	St. Louis	Mo.	1040	184	156	129	92	64	51	964	176	150	123	88	62	48	891	168	143	118	84	59	46	990	176	150	123	88	62	48	891	168	143	118	84	59	46	990	176	150	123	88	62	48	1174	193	164	135	97	68	53							
18	Domestic			176	151	121	87	62	49		170	145	119	85	60	47		168	143	118	84	59	46		170	145	119	85	60	47		168	143	118	84	59	46		170	145	119	85	60	47		168	143	118	84	59	46		176	151	121	87	62	49
19	Import, Intercoastal and Coastwise			171	146	121	87	62	49		169	144	119	85	60	47		168	143	118	84	59	46		169	144	119	85	60	47		168	143	118	84	59	46		169	144	119	85	60	47		1												



Item	BETWEEN	Miles	NEW YORK, N. Y.						Miles	PHILADELPHIA, PA.						Miles	BALTIMORE, MD.						Miles	ELPHIA, PA.						Miles	BALTIMORE, MD.						Miles	ALBANY, N. Y.						Miles	NORFOLK, VA.						Miles	BOSTON, MASS.					
			CLASSES							CLASSES							CLASSES							ASSES							CLASSES							CLASSES							CLASSES												
			1	2	3	4	5	6		1	2	3	4	5	6		1	2	3	4	5	6		1	3	4	5	6	1		2	3	4	5	6	1		2	3	4	5	6	1		2	3	4	5	6								
1	Valparaiso	Ind.	846						770							723							749											749							870							933									
2	Domestic		162	138	113	81	57	45		155	132	109	78	54	43		149	127	104	75	52	41		151	99	78	54	43		149	127	104	75	52	41		151	128	106	76	53	42		164	139	115	82	57	45		167	142	117	84	58	46	
3	Import, Intercoastal and Coastwise		157	135	107	78	55	44		151	129	105	76	53	42		149	127	104	75	52	41		151	95	76	53	42		149	127	104	75	52	41		151	128	105	76	53	42		149	127	104	75	52	41		157	135	107	78	55	44	
4	Export, Intercoastal and Coastwise		152	130	107	78	55	44		150	128	105	76	53	43		149	127	104	75	52	41		152	95	76	53	43		149	127	104	75	52	41		152	128	105	76	53	42		149	127	104	75	52	41		152	130	107	78	55	44	
5	Vincennes	Ind.	912						832							748							867											867							846							1051									
6	Domestic		171	145	120	86	60	47		164	139	115	82	57	45		154	131	108	77	54	42		162	15	82	57	45		154	131	108	77	54	42		162	138	113	81	57	45		163	139	114	82	57	45		178	151	125	89	62	49	
7	Import, Intercoastal and Coastwise		162	139	111	80	57	45		156	133	109	78	55	43		154	131	108	77	54	42		156	99	78	55	43		154	131	108	77	54	42		156	133	109	78	55	43		154	131	108	77	54	42		162	139	111	80	57	45	
8	Export, Intercoastal and Coastwise		157	134	111	80	57	45		155	132	109	78	55	43		154	131	108	77	54	42		155	99	78	55	43		154	131	108	77	54	42		155	122	109	78	55	43		154	131	108	77	54	42		157	134	111	80	57	45	
9	Warren	Ill.	1020						949							902							907											907							1048							1091									
10	Domestic		183	156	128	92	64	50		176	150	123	88	62	48		171	145	120	86	60	47		168	23	88	62	48		171	145	120	86	60	47		168	143	118	84	59	46		185	157	130	93	65	51		185	157	130	93	65	51	
11	Import, Intercoastal and Coastwise		179	153	123	89	63	50		173	147	121	87	61	48		171	145	120	86	60	47		168	21	87	61	48		171	145	120	86	60	47		168	143	118	84	59	46		171	145	120	86	60	47		179	153	123	89	63	50	
12	Export, Intercoastal and Coastwise		174	148	123	89	63	50		172	146	121	87	61	48		171	145	120	86	60	47		168	21	87	61	48		171	145	120	86	60	47		168	143	118	84	59	46		171	145	120	86	60	47		174	148	123	89	63	50	
13	Washington C. H.	Ohio	660						580							496							645											645							620							829									
14	Domestic		141	120	99	71	49	39		132	112	92	66	46	36		122	104	85	61	43	34		135	92	66	46	36		122	104	85	61	43	34		135	115	95	68	47	37		135	115	95	68	47	37		154	131	108	77	54	42	
15	Import, Intercoastal and Coastwise		130	112	88	64	46	37		124	106	86	62	44	35		122	104	85	61	43	34		124	36	62	44	35		122	104	85	61	43	34		124	106	86	62	44	35		122	104	85	61	43	34		130	112	88	64	46	37	
16	Export, Intercoastal and Coastwise		125	107	88	64	46	37		123	105	86	62	44	35		122	104	85	61	43	34		123	36	62	44	35		122	104	85	61	43	34		123	105	86	62	44	35		122	104	85	61	43	34		125	107	88	64	46	37	
17	Wolcottville	Ind.	764						688							641							659											641							814							843									
18	Domestic		152	129	106	76	53	42		143	122	100	82	50	39		135	115	95	68	47	37		138	90	72	50	39		135	115	95	68	47	37		138	117	97	69	48	38		161	137	113	81	56	44		154	131	108	77	54	42	
19	Import, Intercoastal and Coastwise		143	123	98	71	50	40		137	117	96	69	48	38		135	115	95	68	47	37		137	96	69	48	38		135	115	95	68	47	37		137	117	96	69	48	38		135	115	95	68	47	37		143	123	98	71	50	40	
20	Export, Intercoastal and Coastwise		138	118	98	71	50	40		136	116	96	69	48	38		135	115	95	68	47	37		136	96	69	48	38		135	115	95	68	47	37		136	116	96	69	48	38		135	115	95	68	47	37		138	118	98	71	50	40	
21	Youngstown	Ohio	500						424							378							462											378							570							616									
22	Domestic		119	101	83	60	42	33		109	93	76	55	38	30		103	88	72	52	36	28		116	76	55	38	30		103	88	72	52	36	28		116	99	81	58	41	32		127	108	89	64	44	35		134	114	94	67	47	37	
23	Import, Intercoastal and Coastwise		111	96	75	55	39	31		105	90	73	53	37	29		103	88	72	52	36	28		105	73	53	37	29		103	88	72	52	36	28		105	90	73	53	37	29		105	106	88	63	44	34		111	96	75	55	39	31	
24	Export, Intercoastal and Coastwise		106	91	75	55	39	31		104	89	73	53	37	29		103	88	72	52	36	28		104	73	53	37	29		103	88	72	52	36	28		104	89	73	53	37	29		105	106	88	63	44	34		106	91	75	55	39	31	



Statement of Class Rates in Effect December 2, 1931, or Prior to Rates Published to Rates Published Under I.C.C. Docket 15879, Between Representative Points  
In Central Freight Assn. Territory Located in Former McGraham Formula McGraham Formula Percentage Groups and New York, Philadelphia, Baltimore  
Albany, Norfolk and Boston Applicable on Domestic, Import and Domestic, Import and Export Traffic and the Short Line Distances.

Rates in Cents Per 100 P n Cents Per 100 Pounds

EXHIBIT No. 9  
WITNESS: .....  
I.C.C. DOCKET No. 29117  
CONSISTING OF 1 PAGE

Item	Between		Miles	New York, N. Y.						Miles	Philadelphia, Pa.						Miles	Baltimore, Md.						Miles	Albany, N. Y.						Miles	Norfolk, Va.						Miles	Boston, Mass.										
	And	Representative Point in Group		CLASSES							CLASSES							CLASSES							CLASSES							CLASSES																	
				1	2	3	4	5	6		1	2	3	4	5	6		1	2	3	4	5	6		1	2	3	4	5	6		1	2	3	4	5	6												
1	66	Youngstown, Ohio	E.B.	500	94½	83	63	41	37½	31½	424	92½	81	61	42	35½	29½	378	91½	80	60	41	34½	28½	60	41	34½	28½	462	90	79½	60½	42	36	30	570	106½	93	70	48	40½	33½	646	101½	89	68	48	40½	33½
2	67		W.B.	500	95	83½	63½	44	38	32	424	89	77½	61½	42	36	30	378	87	75½	60½	41	35	29	60½	41	35	29	462	79	68½	54½	37½	32	26½	570	106½	93	70	48	40½	33½	646	S 101	88½	67	47	40	33½
3																																																	
4																																																	
5	71	Cleveland, Ohio	E.B.	562	101	88½	67	47	40	33½	490	99	86½	65	45	38	31½	444	98	85½	64	44	37	30½	64	44	37	30½	468	97	85	64½	45	38½	32	636	106½	93	70	48	40½	33½	652	108	94½	72	51	43	35½
6			W.B.	562	101	88½	67	47	40	33½	490	95	82½	65	45	38	31½	444	93	80½	64	44	37	30½	64	44	37	30½	468	79	68½	54½	37½	32	26½	636	106½	93	70	48	40½	33½	652	D 101	88½	67	47	40	33½
7																																																	
8																																																	
9																																																	
10	74	Columbus, Ohio	E.B.	621	109½	96	73	51	43½	36½	545	107½	94	71	49	41½	34½	479	106½	93	70	48	40½	33½	70	48	40½	33½	606	105	92	70	49	42	35	632	106½	93	70	48	40½	33½	790	116½	102	78	55	46½	38½
11	78		W.B.	621	111	97	73½	51½	44	37	545	105	91	71½	49½	42	35	479	103	89	70½	48½	41	34	70½	48½	41	34	606	83½	72	56	42	32½	27½	632	106½	93	70½	48½	41	34	790	S 111	97	73½	51½	44	37
12																																																	
13																																																	
14	87	Cincinnati, Ohio	E.B.	724	123½	108½	82	57½	49	41½	644	121½	106½	80	55½	47	39½	560	120½	105½	79	54½	46	38½	79	54½	46	38½	707	118½	104	78½	55	47	40	657	120½	105½	79	54½	46	38½	891	130½	114½	87	61½	52	43½
15			W.B.	724	123½	108½	82	57½	49	41½	644	117½	102½	80	55½	47	39½	560	115½	100½	79	54½	46	38½	79	54½	46	38½	707	95	83½	63½	47½	37½	32	657	107½	94½	75	51½	44	36½	891	S 123½	108½	82	57½	49	41½
16																																																	
17																																																	
18	93	Indianapolis, Ind.	E.B.	799	132	116	88	61½	52½	44	723	130	114	86	59½	50½	42	650	129	113	85	58½	49½	41	85	58½	49½	41	750	126½	111½	84½	59	50½	42	767	129	113	85	58½	49½	41	934	139	122	93	65½	55½	46
19			W.B.	799	132	116	88	61½	52½	44	723	126	110	86	59½	50½	42	650	124	108	85	58½	49½	41	85	58½	49½	41	750	103½	91	69	49½	41	34½	767	116	102	81	55½	47½	39	934	S 132	116	88	61½	52½	44
20																																																	
21																																																	
22		Chicago, Ill.	E.B.	890	142	124½	94½	66	56½	47½	814	140	122½	92½	64	54½	45½	767	139	121½	91½	63	53½	44½	91½	63	53½	44½	789	136½	119½	90½	63½	54	45½	914	139	121½	91½	63	53½	44½	973	149	130½	99½	70	59½	49½
23			W.B.	890	142	124½	94½	66	56½	47½	814	136	118½	92½	64	54½	45½	767	134	116½	91½	63	53½	44½	91½	63	53½	44½	789	113½	99½	75½	54	45	38	914	126	110½	87½	60	51½	42½	973	S 142	124½	94½	66	56½	47½
24																																																	
25																																																	
26	117	St. Louis, Mo.	E.B.	1040	166	145½	110½	77	66	55½	964	164	143½	108½	75	64	53½	891	163	142½	107½	74	63	52½	107½	74	63	52½	990	159½	139½	106	74	63½	53½	996	163	142½	107½	74	63	52½	1174	173	151½	115½	81	69	57½
27			W.B.	1040	166	145½	110½	77	66	55½	964	160	139½	108½	75	64	53½	891	158	137½	107½	74	63	52½	107½	74	63	52½	990	137½	120½	91½	66½	54½	46	996	150	131½	103½	71	61	50½	1174	S 166	145½	110½	77	66	55½
28																																																	
29																																																	

Tariff Authorities

E.B.—B.T. Jones, Tariff No. 218-G, I.C.C. 2253.  
W.B.—W.S. Curlett's, I.C.C.A.—149 and New England  
Frt. Assn.—T.B. Tariff No. 1-B, I.N. Doe's  
I.C.C.100.

EXPLANATION OF REFERENCE

① Applies for export to Foreign Countries.  
S—Via Standard All-Rail routes.  
D—Via Differential All-Rail routes thro-  
① Applies other than via Detroit or Po-  
② Applies via Detroit or Port Huron, Mi-

ATION OF REFERENCE MARKS

port to Foreign Countries, except Mexico.  
All Rail routes.  
ial All-Rail routes through Canada  
than via Detroit or Port Huron, Mich.  
troit or Port Huron, Mich.

EXPLANATION OF ABBREVIATIONS.

E.B.—Eastbound  
W.B.—Westbound



EXHIBIT No. 12

WITNESS: HODKINSON

I.C.C. DOCKET No. 29127

453

CHART SHOWING RULES GOVERNING THE APPLICATION OF  
EXPORT, IMPORT, INTERCOASTAL AND COASTWISE RATES AT  
THE NORTH ATLANTIC PORTS

APPLICATION OF EXPORT RATES

Rates will apply on property consigned for export to foreign countries, viz.:

Canal Zone of Panama, Cuba, Insular Possessions of the United States; (Philippine Islands, Puerto Rico, Hawaiian Islands and Virgin Islands), also all destination not located in: United States of America (including Alaska), Canada (including provinces of Prince Edward Island, New Brunswick and Nova Scotia), Newfoundland, Islands of Miquelon and St. Pierre.

when exported direct from ports; will only apply, except as otherwise provided, on traffic which does not leave possession of the carrier delivered by the Atlantic Port Terminal Carriers direct to the steamer or steamers' dock upon arrival at the port or after storage or transit has been accorded by the port carrier at the port under tariffs which permit the application of the export rates, and also on traffic delivered to the party entitled to receive it at the carrier's seaboard stations to which export rates apply which traffic is handled direct from carriers' stations to steamship docks and on which required proof of exportation is given.

Shipments not consigned in shipping orders or bills of lading for export, which are ordered for export after arrival at seaboard, or outer holding yard or yards, will be subject to the rates, rules and regulations applicable to export traffic or the same as would have applied had the shipment been originally consigned for export, so long as the property has not passed from the possession of the carrier and is subject to a reconsigning charge.

Export rates will also apply on shipments consigned on bills of lading for export, destined to foreign countries or foreign possessions of the United States, handled through United States Navy Yards, Naval Bases or Army Bases or delivered to United States Government vessels docked there at on presentation of proper evidence of exportation.

All shipments consigned to ports for export are to be waybilled and bills of lading issued at the export rates.

Rate to Baltimore, Md., on export property will apply on shipments delivered to vessels directly from railroad owned piers or piers leased to and operated by the Railroad Company at Baltimore, Md.

#### APPLICATION OF IMPORT RATES

Import rates from the ports, will apply on property received from foreign countries, viz.:

Canal Zone of Panama;

Cuba;

Insular Possessions of the United States (Philippine Islands, Puerto Rico, Hawaiian Islands and Virgin Islands), also

All points of origin not located in:

United States of America (including Alaska);

Canada (including provinces of Prince Edward Island, New Brunswick and Nova Scotia);

Newfoundland;

Islands of Miquelon and St. Pierre

and delivered to the rail carrier direct from ship's side or dock of vessel bringing such property to origin stations or on such property received by the rail carriers from customs bonded warehouses; appraisers' stores (not internal revenue stores) or public warehouses at the port of entry (see Note A) or initial carriers' stores, or fumigation plants after having been fumigated under federal regulations and inspection, within twelve (12) months from date of entry, provided same has not been trans-shipped at any other United States port (see Note B).

The rate to be applied will be that in effect on the date property is received by the carrier for transportation, either direct to destination or to an intermediate point for transit under transit tariffs lawfully on file with the Interstate Commerce Commission.

NOTE A—In order to obtain the benefit of import rates on traffic stored in public warehouses, the owner or his agent must register such traffic at the port of entry, except as otherwise provided, with the Trunk Line Freight Inspection Bureau within twenty-five (25) days of the date such traffic arrived at such port of entry and at the time of reshipment furnish the carrier with evidence showing origin of such traffic as provided in Note C, as well as date traffic was entered at the port of entry.

It is understood the actual inspection service at Norfolk and Lambert Point, Va. is performed by the Southern Weighing and Inspection Bureau.



NOTE B—Trans-shipment, as herein mentioned, means the unloading of traffic at any port, and subsequent reshipment thereof to another port under a new bill of lading or contract of carriage, but does not mean traffic which is transferred from one vessel to another for on-carriage under the terms of the original bill of lading taken out at time of forwarding at the foreign port from which traffic cleared on the first vessel.

NOTE C—

#### CERTIFICATE ON IMPORT FREIGHT (Note)

Each bill of lading and shipping order covering import freight received from steamer dock, customs bonded warehouse, Appraiser's stores, initial carrier's stores, public warehouses or fumigation plants after having been fumigated under Federal regulations and inspection, entitled to an import rate or the application of import rules, regulations and charges shall bear on its face a certificate in the following form which must be signed by the shipper or his

Agent:

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#### IMPORT CERTIFICATE

..... hereby certify that the property covered  
(I) (We) by this receipt was imported in the .....  
(kind of vessel and its name)  
from ..... arriving at this port on  
(name of foreign port)  
..... and has not been in any private ware-  
(date of arrival)  
house (not public warehouse) but is transferred to railroad  
station direct from .....  
(Steamer dock)  
.....  
(Customs' bonded warehouse) (Appraiser's stores)  
.....  
(Initial carrier's stores) (Public Warehouses)  
or from fumigation plants after having been fumigated  
under Federal Regulations and inspection.

Shipper .....  
By Agent .....

NOTE—In order to obtain the benefit of import rates or the application of import rules, regulations and charges, the certification referred to in this rule must be made at the time the shipment is tendered to the carrier.

### APPLICATION OF INTERCOASTAL RATES FROM NORTH ATLANTIC PORTS

Rates apply on Intercoastal traffic originating at points on the Pacific Coast of the United States, Alaska and British Columbia also on traffic originating at interior Pacific Coast points moving via Pacific Coast ports, and moving via the Panama Canal, when arriving at the ports via vessel and delivered to the rail carrier direct from shipside or dock of vessel bringing such property to origin ports provided same has not been trans-shipped at any other United States port (Note).

NOTE—Trans-shipment as herein mentioned means the unloading of traffic at any port and subsequent reshipment thereof to another port under a new bill of lading or contract of carriage.

The rate to be applied will be that in effect on the date the property is received by the carrier.

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### APPLICATION OF INTERCOASTAL RATES TO NORTH ATLANTIC PORTS

Rates will only apply on traffic destined to points on the Pacific Coast of the United States, Alaska and British Columbia also on traffic destined to interior Pacific Coast points moving via Pacific Coast ports and moving via the Panama Canal, which is delivered by the Atlantic Port Carriers to the steamer or steamers direct upon arrival at the port or if storage or transit has been accorded by the port carrier at the port under tariffs which permit the application of the Intercoastal rates, and also on traffic delivered to the party entitled to receive it at the carriers' seaboard stations to which intercoastal rates apply, which traffic is handled direct from carrier's stations to steamship docks and on which required proof of trans-shipment is given.

Shipments not consigned in shipping orders or bills of lading to a point on the Pacific Coast of the United States, Alaska or British Columbia for movement via Panama Canal, which are ordered to such destinations after arrival at the seaboard or outer yard or yards, will be subject to the rates, rules and regulations that would have applied had the shipment been originally consigned for such destination at the time of forwarding from point of origin.

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## APPLICATION OF COASTWISE RATES FROM NORTH ATLANTIC PORTS

Rates will only apply on Coastwise traffic originating at South Atlantic and Gulf Ports south of Albemarle Sound, and on traffic originating at interior points moving via said ports, when arriving at said origin ports via vessel and delivered to the rail carrier direct from shipside or dock of vessel bringing such property to said origin ports, provided same has not been trans-shipped at any other United States port (Note).

NOTE—Trans-shipment as herein mentioned means the unloading of traffic at any port and subsequent reshipment thereof to another port under a new bill of lading or contract of carriage.

The rate to be applied will be that in effect on the date the property is received by the carrier.

## APPLICATION OF COASTWISE RATES TO NORTH ATLANTIC PORTS

Rates will only apply on Coastwise traffic destined to South Atlantic and Gulf Ports south of Albemarle Sound, and on traffic destined to interior points moving via said ports, which is delivered by the Atlantic Port Carriers to the steamer or steamers direct upon arrival at the port or if storage or transit has been accorded by the port carrier at the port under tariffs which permit the application of coastwise rates, and also on traffic delivered to the party entitled to receive it at the "carriers" seaboard stations to which coastwise rates apply, which traffic is handled direct from carrier's station to steamship docks and on which required proof of trans-shipment is given.

Shipments not consigned in shipping order or bills of lading to coastwise points located in the United States south of Albemarle Sound, which are ordered to such destinations after arrival at the seaboard or outer yard or yards, will be subject to the rates, rules and regulations that would have applied if the shipment had been originally consigned for such destination at the time of forwarding from point of origin.

## TARIFF AUTHORITIES

W. S. Curlett's I.C.C. A-574	W. S. Curlett's I.C.C. A-747
W. S. Curlett's I.C.C. A-625	B. T. Jones' I.C.C. 3422
W. S. Curlett's I.C.C. A-647	B. T. Jones' I.C.C. 3642
W. S. Curlett's I.C.C. A-694	B. T. Jones' I.C.C. 3758
B. & L.E.R.R. I.C.C. 1163	P.R.R. I.C.C. 2663
B. & O.R.R. I.C.C. 23376	P.R.R. I.C.C. 2675
B. & O.R.R. I.C.C. 23410	P.R.R. I.C.C. 2688
B. & O.R.R. I.C.C. 23530	P. & L.E.R.R. I.C.C. 3325



EXHIBIT No. 13

WITNESS: HODKINSON

I.C.C. DOCKET No. 29117

STATEMENT SETTING FORTH THE REGULATIONS OF THE  
OFFICIAL TERRITORY RAIL CARRIERS SERVING THE PORT  
OF NORFOLK, VA. COVERING THE SERVICE OF LOADING  
AND UNLOADING CARLOAD FREIGHT

LIST OF OFFICIAL TERRITORY RAILROADS  
SERVING THE PORT OF NORFOLK

Chesapeake and Ohio Railway Company, The  
Norfolk and Western Railway Company,  
Norfolk & Portsmouth Belt Line Railroad Co.  
Pennsylvania Railroad Co., The  
Virginian Railway Co., The

HANDLING EXPENSES

All freight received or delivered at other than regular receiving or delivering stations of this company shall be loaded or unloaded by the shipper or consignee, unless this company elects to perform this service, in which case a charge of 28 cents per 2,000 pounds for unloading and for loading will be made.

NOTE:—It is understood that the loading and unloading charges above specified will be assessed on all traffic except that received at or delivered in the designated space in Railroad Company's warehouse where local traffic is usually received or delivered.

ALLOWANCE FOR LOADING BANANAS

Where the service of loading bananas into cars at Norfolk, Va., is performed by shippers for account of carriers, an allowance of \$2.50 per car will be made to shippers for performing such loading service.

WHARFAGE AND HANDLING CHARGES

TRANSPORT, TRADING AND TERMINAL CORPORATION

Any charge of the Norfolk & Portsmouth Belt Line Railroad Company for wharfage, storage, loading, unloading, handling, transferring, or any service whatever at the Transport, Trading and Terminal Corporation, as per Norfolk & Portsmouth Belt Line Railroad Company Tariff 6-J, I.C.C. 105, will be in addition to the rate to or from Norfolk, Va., except that on export, import, coastwise and intercoastal traffic, any quantity; on which the freight rate is not less than 10 cents per 100 pounds, or \$2.00 per ton,

wharfage charge of 1 cent per 100 pounds, and handling charge not to exceed 3 cents per 100 pounds or 60 cents per ton, will be included in the freight rate to or from Norfolk, Va., with the exceptions shown in paragraphs 1, 2 and 3 under heading "Absorption of Wharfage and Handling Charges".

#### LINCOLN TIDEWATER TERMINALS, INC.

Any charge of the Norfolk and Portsmouth Belt Line Railroad Company for wharfage, storage, loading, unloading, handling, transferring, or any service whatever at the Lincoln Tidewater Terminals, Inc. as per Norfolk and Portsmouth Belt Line Railroad Company's Tariff 6-J, I.C.C. 105, will be in addition to the rate to or from Norfolk, Va., except that on export, import, coastwise and intercoastal traffic, any quantity, on which the freight rate is not less than 10 cents per 100 pounds, or \$2.00 per ton, wharfage charge of 1 cent per 100 pounds, and handling charge not to exceed 3 cents per 100 pounds, or 60 cents per ton, will be included in the freight rate to or from Norfolk, Va., except as shown in paragraphs 1, 2 and 3 under "Absorption of Wharfage and Handling Charges".

#### MUNICIPAL GRAIN ELEVATOR

Any charge of the Norfolk and Portsmouth Belt Line Railroad Company for wharfage, storage, loading, unloading, handling, transferring or any service whatever at the Municipal Grain Elevator, as per Norfolk and Portsmouth Belt Line Railroad Company's Tariff 6-J, I.C.C. 105, will be in addition to the rate to Norfolk, Va., except that on grain, in carloads, handled through the elevator direct to vessel wharfage charge of one cent per 100 pounds will be included in the freight rate to Norfolk, Va.

#### JONES COLD STORAGE AND TERMINAL CORPORATION (EAST WATER STREET TERMINALS), NORFOLK, VA.

On Export, Import, Intercoastal and Coastwise traffic, any quantity, handled through the Jones Cold Storage and Terminal Corporation (East Water Street Terminals), Norfolk, Va., which pays the rail carriers and connections 10 cents per 100 pounds, or over, or \$2.00 per ton, or over, wharfage charge of one cent per 100 pounds and handling charge not to exceed 3 cents per 100 pounds or 60 cents per ton, will be included in the freight rate to or from Norfolk, Va., except as shown in paragraphs 1, 2 and 3 under heading "Absorption of Wharfage and Handling Charges".

**SOUTHGATE TERMINAL CORPORATION. (NORFOLK DIVISION  
TERMINALS), NORFOLK, VA.**

On Export, Import, Intercoastal and Coastwise traffic, any quantity, which pays the Rail Carriers and connections 10 cents per 100 pounds, or over, or \$2.00 per ton, or over, wharfage charge of one cent per 100 pounds and handling charge not to exceed 3 cents per 100 pounds or 60 cents per ton, will be included in the freight rate to or from Norfolk, Va., except freight in tank cars and as shown in paragraphs 1, 2 and 3 under heading "Absorption of Wharfage and Handling Charges".

**SECURITY WAREHOUSE CORPORATION. NORFOLK, VA.**

On Export, Import, Intercoastal and Coastwise traffic, any quantity, moving through the Security Warehouse Corporation, Norfolk, Va., which pays the Rail Carriers and connection 10 cents per 100 pounds, or over, or \$2.00 per ton, or over, wharfage charge of one cent per 100 pounds and handling charge not to exceed 3 cents per 100 pounds or 60 cents per ton, will be included in the freight rate to or from Norfolk, Va., except freight in tank cars and as shown in paragraphs 1, 2 and 3 under heading "Absorption of Wharfage and Handling Charges".

456 **IMPERIAL TOBACCO COMPANY, LTD. (BERKLEY  
WAREHOUSES AND TRACKS), NORFOLK, VA.**

On Export, Import, Intercoastal and Coastwise traffic, any quantity, handled through the Imperial Tobacco Company, Ltd. (Berkley Warehouses and Tracks), Norfolk, Va., which pays the Rail Carriers and connections 10 cents per 100 pounds, or over, or \$2.00 per ton, or over, wharfage charge of one cent per 100 pounds and handling charge not to exceed 3 cents per 100 pounds, or 60 cents per ton, will be included in the freight rate to or from Norfolk, Va., except freight in tank cars and as shown in paragraphs 1, 2 and 3 under heading "Absorption of Wharfage and Handling Charges".

**H. B. ROGERS, INC. (PORTSMOUTH DIVISION TERMINALS),  
PIER NO. F, PORTSMOUTH, VA.**

On Export, Import, Intercoastal and Coastwise traffic, any quantity, handled through the H. B. Rogers, Inc. (Portsmouth Division Terminals), Pier No. 1, Portsmouth, Va., which pays the Rail Carriers and connections 10 cents per 100 pounds, or over, or \$2.00 per ton, or over, wharfage charge of one cent per 100 pounds and handling charge not to exceed 3 cents per 100 pounds, or 60 cents per ton, as



provided in Norfolk and Portsmouth Belt Line Tariff 6-J, I.C.C. 105, will be included in the freight rate to or from Norfolk, Va., except freight in tank cars and as shown in paragraphs 1, 2 and 3 under heading "Absorption of Wharfage and Handling Charges".

PINNERS POINT TERMINAL (PORTSMOUTH), VA.

On Export, Import, Intercoastal and Coastwise traffic, any quantity, handled through the Southern Railway Terminal at Pinners Point (Portsmouth), Va., which pays the Rail Carriers and connections 10 cents per 100 pounds or \$2.00 per ton, or over wharfage charge of one cent per 100 pounds and handling charge not to exceed 3 cents per 100 pounds, or 60 cents per ton, as published in tariffs lawfully on file with the Interstate Commerce Commission, will be included in the freight rate to or from Norfolk, Va., except as shown in paragraphs 1, 2 and 3 under heading "Absorption of Wharfage and Handling Charges".

NORFOLK TIDEWATER TERMINALS, INC., PINNERS POINT (PORTSMOUTH), VA.

On Export, Import, Intercoastal and Coastwise traffic any quantity, handled through the Norfolk Tidewater Terminals, Inc.; at Pinners Point (Portsmouth), Va., which pays the Rail Carriers and connections 10 cents per 100 pounds or \$2.00 per ton, or over, wharfage charge of one cent per 100 pounds and handling charge not to exceed 3 cents per 100 pounds or 60 cents per ton, as published in tariffs lawfully on file with the Interstate Commerce Commission, will be included in the freight rate to or from Norfolk, Va., except as shown in paragraphs 1, 2 and 3 under heading "Absorption of Wharfage and Handling Charges".

LAMBERT POINT TERMINALS (NORFOLK & WESTERN RAILWAY COMPANY PIERS)

On Export, Import, Intercoastal and Coastwise traffic, any quantity, which pays the Rail Carriers and connections 10 cents per 100 pounds, or over, or \$2.00 per ton, or over, wharfage charge of one cent per 100 pounds and handling charge not to exceed 3 cents per 100 pounds, or 60 cents per ton, will be included in the freight rate to or from Norfolk, Va., except as shown in paragraphs 1, 2 and 3 under heading "Absorption of Wharfage and Handling Charges".

NORFOLK SOUTHERN RAILROAD COMPANY'S BERKLEY TERMINALS (NORFOLK), VA.

On Export, Import, Intercoastal and Coastwise traffic, any quantity, which pays the Rail Carriers and connections

10 cents per 100 pounds, or over, or \$2.00 per ton, or over, wharfage charge of one cent per 100 pounds and handling charge not to exceed 3 cents per 100 pounds, or 60 cents per ton, will be included in the freight rate to or from Norfolk, Va., except as shown in paragraphs 1, 2 and 3 under heading "Absorption of Wharfage and Handling Charges."

#### LAMBERT'S POINT DOCK, INC.

On Export, Import, Intercoastal and Coastline traffic, any quantity, which pays the Rail Carriers and connections 10 cents per 100 pounds, or over, or \$2.00 per ton, or over, wharfage charge of one cent per 100 pounds and handling charge not to exceed 3 cents per 100 pounds, or 60 cents per ton, will be included in the freight rate to or from Norfolk, Va., except as shown in paragraphs 1, 2 and 3 under heading "Absorption of Wharfage and Handling Charges."

#### NORFOLK WAREHOUSE COMPANY, INC.

On Export, Import, Intercoastal and Coastwise traffic, any quantity, which pays the Rail Carriers and connections 10 cents per 100 pounds, or over, or \$2.00 per ton, or over, wharfage charge of one cent per 100 pounds and handling charge not to exceed 3 cents per 100 pounds, or 60 cents per ton, will be included in the freight rate to or from Norfolk, Va., except as shown in paragraphs 1, 2 and 3 under heading "Absorption of Wharfage and Handling Charges."

#### ABSORPTION OF WHARFAGE AND HANDLING CHARGES

(1) (a)—Handling Charges will not be absorbed on freight in open cars, except on lumber, all kinds (including wooden logs, wooden poles, wooden ties and wooden piling), carloads (see paragraph (b)).

(b)—When stowing in open cars is required, handling charge of  $\frac{1}{2}$  cent per 100 pounds or 10 cents per 2000 pounds will be absorbed on lumber, all kinds (including wooden logs, wooden poles, wooden ties and wooden piling), carloads, loaded on open cars at the Lamberts Point Terminals (Norfolk & Western Railway Company Piers), Lamberts Point Docks, Inc.

(2) Wharfage and/or handling charges will not be absorbed on freight accorded lighterage, or on grain or any other inbound or outbound traffic milled, mixed, malted or stored in transit at the Transport, Trading and Terminal Corporation; Lambert's Point Docks, Inc., Lincoln Tidewater Terminals, Inc., Norfolk Warehouse Company, Inc., H. B. Rogers, Inc. (Norfolk Division Terminals); Security

Warehouse Corporation; Imperial Tobacco Company, Ltd., (Berkley Warehouse and Tracks); Norfolk Southern Railroad Company, Berkley Terminals; Jones Cold Storage and Terminal Corp. (East Water Street Terminals); Lamberts Point Terminals (Norfolk & Western Railway Company Piers), Norfolk, Va.; H. B. Rogers, Inc. (Portsmouth Division Terminals); Pier No. 1; Pinners Point Terminal, Portsmouth, Va., Norfolk Tidewater Terminals, Inc., Pinners Point (Portsmouth), Va.

457 (3) In all other respects on Export, Import, Intercoastal and Coastwise traffic the wharfage, handling, storage and/or other charges applicable at the Transport, Trading and Terminal Corporation; Lambert's Point Docks, Inc., Lincoln Tidewater Terminals, Inc., Norfolk Warehouse Company, Inc., H. B. Rogers, Inc., (Norfolk Division Terminals) Security Warehouse Corporation; Imperial Tobacco Company, Ltd.; (Berkley Warehouses and Tracks); Norfolk Southern Railroad Company, Berkley Terminals; Jones Cold Storage and Terminal Corporation, (East Water Street Terminal); Lambert's Point Terminals, (Norfolk & Western Railway Company Piers), Norfolk, Va., H. B. Rogers, Inc., (Portsmouth Division Terminals), Pier No. 1; Pinners Point Terminal, Portsmouth, Va., and Norfolk Tidewater Terminals, Inc., Pinners Point (Portsmouth), Va., will be in addition to the rate to and from Norfolk, Va., or Portsmouth, Va., as the case may be, published in tariffs lawfully on file with the Interstate Commerce Commission.

#### TARIFFS IN WHICH SPECIFIC RULES AND REGULATIONS ARE PUBLISHED

C. & O. Ry. I.C.C. No. 12811

N. & W. Ry. I.C.C. No. 9179

P. R. R. I.C.C. No. 2613

Vgn. Ry. I.C.C. No. 2196

Nor. & Ports. Belt Line R. R. I.C.C. No. 105



EXHIBIT No. 14

WITNESS: HODKINSON

I.C.C. DOCKET No. 29117

PAGE 1 OF 3 PAGES

STATEMENT SETTING FORTH THE REGULATIONS OF THE RAIL  
CARRIERS SERVING THE PORT OF BALTIMORE, MARYLAND,  
COVERING THE SERVICE OF LOADING AND UNLOADING CAR-  
LOAD FREIGHT

LIST OF RAILROADS SERVING PORT OF BALTIMORE, MD.

The Baltimore and Ohio Railroad Company  
Canton Railroad Company  
The Pennsylvania Railroad Company  
Western Maryland Railway Company

ALLOWANCES TO COVER LOADING OF BANANAS

Where the service of loading bananas into cars at Baltimore, Md. is performed by shippers for account of carriers, an allowance of \$2.50 per car will be made to shippers for performing such loading service.

LOADING AND UNLOADING OF FREIGHT DESTINED  
TO OR RECEIVED FROM FOREIGN PORTS

Unless otherwise provided by tariffs lawfully on file with the Interstate Commerce Commission, Public Service Commission of Maryland or herein, on traffic to or from foreign ports which pays the Railroads serving the Port of Baltimore, Md. and their connections not less than 10 cents per 100 pounds, or \$2.00 per ton, the freight rate will include loading from lighters or platform or piers under cover to cars or from open piers to box cars, or unloading from cars to platform of piers under cover or to lighters or from box cars to open piers, EXCEPT Oils, in bulk, at open or closed piers; Import Lumber not otherwise indexed by name in Official Classification (including Wooden Logs, Wooden Poles, Wooden Piling and Wooden Ties) and Pulpwood. (See heading "Loading charges on lumber") and traffic handled to or from open cars at open piers.

On traffic paying less than 10 cents per 100 pounds or \$2.00 per ton when the railroad performs the service there will be an additional charge of 55 cents per ton for loading or unloading of cars; the total labor and freight charges not to exceed 10 cents per 100 pounds or \$2.00 per ton EXCEPT Oils, in bulk at open or closed piers; Import Lumber not otherwise indexed by name in Official Classification, (including Wooden Logs, Wooden Poles, Wooden Piling and

Wooden Ties) and Pulpwood (see heading "loading charges on lumber"), and traffic handled to or from open cars at open piers.

On property moving under freight rates, which are restricted to not include labor of loading and unloading, if the services performed by the railroad, there will be an additional charge of 55 cents per ton of 2000 pounds, for loading from lighters or platform of piers under cover to cars or from open piers to box cars, or unloading from cars to platform of piers under cover or to lighters or from box cars to open piers, except on Oils, in bulk at open or closed piers; Import Lumber not otherwise indexed by name in Official Classification (including Wooden Logs, Wooden Poles, Wooden Piling and Wooden Ties) and Pulpwood (see heading "loading charges on lumber"), and traffic handled to or from open cars at open piers.

On all property delivered to or received from dray or lighter which does not move to or from this company's piers by rail, when the railroad performs the labor of loading or unloading, a charge of 55 cents per 2000 pounds, subject to a minimum charge of 55 cents on any one shipment, will be assessed.

Unless otherwise provided by tariffs lawfully on file with the Interstate Commerce Commission, Public Service Commission of Maryland, or herein, on traffic to or from foreign ports which pays the railroads serving Port of Baltimore, Md., and their connections, not less than 10 cents per 100 pounds, or \$2.00 per ton, the freight rate will include the labor cost of 70 cents per 2000 pounds on package freight except commodities listed below and 75 cents per 2000 pounds on bulk freight and commodities listed:

Bones, in bulk,	Soda, nitrate of, in bags.
Brick, loose,	Staves, loose,
Glassware, in packages,	Steel, Greased, not boxed
Hides, loose or in bundles,	or crated,
Lath, Metal, in bundles,	Ties, Wire, in bundles.
Lumber, loose,	Tile, loose,
Slate, loose,	Wire, barbed.

For loading from pier to car of import traffic (see Note) and for unloading from car to pier of export traffic on piers of the Canton Railroad whether operated by the Canton Railroad or Steamship Companies or Pier Companies; will not apply on Oils, in bulk, in open or closed piers, or on traffic handled to or from open cars on open piers, or to or from open cars on outside uncovered tracks which are a part of covered piers, on the Canton Railroad.

NOTE:—Cost of labor for loading import lumber, not otherwise indexed by name in Official Classification (including Wooden Logs, Wooden Poles, Wooden Piling and Wooden Ties), and Pulpwood, into or on cars will be in addition to the lawfully published freight rate.

#### LOADING AND UNLOADING DOMESTIC AND COASTWISE FREIGHT

Unless otherwise provided in tariffs lawfully on file with the Interstate Commerce Commission, Public Service Commission of Maryland or herein, rates to and from Baltimore, Md., which pay the Railroads serving the port of Baltimore, Md. and their connections 10 cents per 100 pounds or \$2.00 per ton, or higher, will include loading from lighter or platform of pier under cover to cars, or from open piers to box cars, or unloading from cars to platform of pier under cover or to lighter or from box cars to open pier EXCEPT Oils, in bulk at open or closed piers; Lumber, not otherwise indexed by name in Official Classification (including Wooden Logs, Wooden Poles, Wooden Piling and Wooden Ties) and Pulpwood (see heading "Loading charges on lumber").

On traffic paying less than 10 cents per 100 pounds or \$2.00 per ton, when the railroad performs the service, there will be an additional charge for loading or unloading of cars of 55 cents per ton which must be added to the freight rate to or from Baltimore, Md. The total charge, however, in such cases shall not exceed 10 cents per 100 pounds or \$2.00 per ton, except on articles for which specific charges are named in the following paragraphs and Lumber, not otherwise indexed by name in Official Classification (including Wooden Logs, Wooden Poles, Wooden Piling and Wooden Ties) and Pulpwood (see heading "Loading charges on lumber"), and further that (except articles for

459 which specific charges are named in the following paragraphs) and Lumber, not otherwise indexed by name in Official Classification (including Wooden Logs, Wooden Poles, Wooden Piling and Wooden Ties) and Pulpwood (see heading "Loading Charges on Lumber"), the provisions of this Item will not apply on freight handled from or to open cars at open piers or on Oils, in bulk, at open or closed piers.

On property moving under freight rates, which are restricted to not include labor of loading and unloading, if the service is performed by the railroad, there will be an additional charge of 55 cents per ton of 2000 pounds for loading from lighters or platform of piers under cover



to cars or from open piers to box cars, or unloading from cars to platform of piers under cover or to lighters or from box cars to open piers, except on Oils, in bulk at open or closed piers; Lumber not otherwise indexed by name in Official Classification (including Wooden Logs, Wooden Poles, Wooden Piling and Wooden Ties) and Pulpwood (see heading "Loading Charges on Lumber"), and traffic handled to or from open cars at open piers.

Domestic bulk freight, in carload lots, discharged from ship docked at Canton Piers, Md., Jackson's Wharf, Md., Locust Point Marine Terminus, Md., and Fells Street Station, Md., will be loaded into cars at the expense of the Railroad Company when the rate applicable from Baltimore, Md., to destination is not less than 10 cents per 100 pounds or \$2.00 per ton, except Oils, in bulk, at open or closed piers and other traffic handled to or from open cars at open piers.

On all property delivered to or received from tray or lighter which does not move to or from railroad company's piers by rail, when the railroad performs the labor of loading or unloading; a charge of 55 cents per 2000 pounds, subject to a minimum charge of 55 cents on any one shipment, will be assessed.

Bulk freight, which has been imported, stored in other than railroad warehouses or piers, when lightered to railroad terminals for shipment, will be governed by "Loading and Unloading of freight destined to or received from Foreign Ports".

A labor charge of  $2\frac{3}{4}$  cents per 100 pounds will be assessed except as otherwise provided herein, on bulk freight and articles which cannot be classified as in packages.

The charge for handling heavy shipments of Boilers and Machinery will be as follows:

Weighing 3 tons or over and not exceed-

ing 10 tons ..... \$11.00 per car.

Over 10 tons and not exceeding 20 tons 22.00 per car.

Over 20 tons and not exceeding 25 tons 33.00 per car.

Over 25 tons, shippers must make own arrangements for handling.

Boats and Launches, shippers must make own arrangements for handling.

Unless otherwise provided by tariffs lawfully on file with the Interstate Commerce Commission, Public Service Commission of Maryland, or herein, on carload coastwise freight which moves over the Railroads and pays the rail-

roads serving the Port of Baltimore, Md., and their connection not less than 10 cents per 100 pounds or \$2.00 per ton, the freight rate will include the labor cost of 70 cents per 2000 pounds on package freight, except the following commodities:

Bones, in bulk,	Soda, Nitrate of, in bags,
Brick, loose,	Staves, loose,
Glassware, in packages,	Steel, Greased, not boxed or
Hides, loose or in bundles,	crated,
Lath, Metal, in bundles,	Ties, Wire, in bundles,
Lumber, loose,	Tile, loose,
Slate, loose,	Wire, barbed.

and 75 cents per 2000 pounds on bulk freight and the aforementioned excepted commodities, for loading from pier to car (see Note) and unloading from car to pier on piers of the Canton Railroad, whether operated by the Canton Railroad or Steamship Companies or Pier Companies (Will not apply on Oils, in bulk, at open or closed piers, or on traffic handled to or from open cars on open piers, or to or from open cars on outside uncovered tracks which are a part of covered piers, on the Canton Railroad).

NOTE:—Cost of loading inbound domestic lumber, not otherwise indexed by name in Official Classification (including Wooden Logs, Wooden Poles, Wooden Piling and Wooden Ties) and Pulpwood, into or on cars will be in addition to the lawfully published freight rate.

#### LOADING CHARGES ON LUMBER

(a) On Lumber, not otherwise indexed by name in Official Classification (including Wooden Logs, Wooden Poles, Wooden Ties and Wooden Piling) and Pulpwood, paying rate of 10 cents per 100 pounds or \$2.00 per 2000 pounds, or higher, a charge of 50 cents per 2000 pounds for loading on open cars direct from vessel and \$1.00 per 2000 pounds for loading on open cars or into closed cars from piers, intermediate storage or lighters, will be assessed in addition to the freight charge.

(b) On Lumber, not otherwise indexed by name in Official Classification (including Wooden Logs, Wooden Poles, Wooden Ties and Wooden Piling) and Pulpwood, paying rate of less than 10 cents per 100 pounds, or \$2.00 per 2000 pounds, a charge of 55 cents per 2000 pounds (the total charge, however, not to exceed  $12\frac{1}{2}$  cents per 100 pounds or \$2.50 per 2000 pounds) for loading on open cars placed alongside of vessel, will be assessed. A charge of \$1.00 per 2000 pounds (total charge not to exceed 15 cents per 100

pounds or \$3.00 per 2000 pounds for loading on open cars or into closed cars from piers, intermediate storage or lighters will be assessed. The above charges will be in addition to the freight charges.

#### LOADING AND UNLOADING PACIFIC INTERCOASTAL FREIGHT

Unless otherwise provided in lawfully published tariffs or herein, rates to and from Baltimore, Md., which pays the railroad serving the Port of Baltimore, Md. and their connections 10 cents per 100 pounds, or \$2.00 per ton, or higher, will include loading from lighter or platform of pier under cover to cars, or from open pier to box cars, or unloading from cars to platform of pier under cover or to lighter, or from box cars to open piers. (See Heading "Loading Charges on Lumber").

Bulk freight, in carload lots, discharged from ship docked at Canton Piers, Md., Jackson's Wharf, Md., Locust Point Marine Terminus, Md., and Fells St. Station, Md., will be loaded into cars at the expense of the Railroad Company when the rate applicable from Baltimore, Md., to destination is not less than 10 cents per 100 pounds or \$2.00 per ton, except traffic handled to or from open cars at open piers (see heading "Loading Charges on Lumber").

On freight paying less than 10 cents per 100 pounds or \$2.00 per ton, when the railroad performs the service, there will be an additional charge for such loading or unloading of cars of 55 cents per ton which must be added to the freight rate to or from Baltimore, Md., the total charge, however, in such cases not to exceed 10 cents per 100 pounds, or \$2.00 per ton (See heading "Loading Charges on Lumber").

On property moving under freight rates, which are restricted to not include labor of loading and unloading, if the service is performed by the railroad, there will be an additional charge of 55 cents per ton of 2,000 pounds, for loading from lighters or platform of piers under cover to cars or from open piers to box cars, or unloading from cars to platform of piers under cover or to lighters or from the box cars to open piers (see heading "Loading Charges on Lumber").

#### LOADING CHARGES ON LUMBER

(a) On Lumber, not otherwise indexed by name in Official Classification (including wooden logs, wooden poles, wooden ties and wooden piling) and Pulpwood, paying rate of 10 cents per 100 pounds or \$2.00 per 2000 pounds, or higher, a charge of 50 cents per 2000 pounds for loading on open



cars direct from vessel and \$1.00 per 2000 pounds for loading on open cars or into closed cars from piers, intermediate storage or lighters, will be assessed in addition to the freight charge.

(b) On lumber, not otherwise indexed by name in Official Classification (including wooden logs, wooden poles, wooden ties and wooden piling) and Pulpwood, paying rate of less than 10 cents per 100 pounds, or \$2.00 per 2000 pounds, a charge of 55 cents per 2000 pounds (the total charge, however, not to exceed  $12\frac{1}{2}$  cents per 100 pounds or \$2.50 per 2000 pounds) for loading on open cars placed alongside of vessel, will be assessed. A charge of \$1.00 per 2000 pounds (total charge not to exceed 15 cents per 100 pounds or \$3.00 per 2000 pounds) for loading on open cars or into closed cars from piers, intermediate storage or lighters will be assessed. The above charges will be in addition to the freight charges.

On all property delivered to or received from dray or lighter which does not move to or from this company's piers by rail, when the railroad performs the labor of loading or unloading, a charge of 55 cents per 2000 pounds, subject to a minimum charge of 55 cents on any one shipment, will be assessed.

The Railroad Company will not load or unload freight handled to or from open cars at open piers, except inbound Lumber (see heading "Loading Charges on Lumber"), or oils, in bulk, at open or closed piers.

The minimum charge on any one shipment will be 55 cents.

Unless otherwise provided by tariffs lawfully on file with the Interstate Commerce Commission, or herein, on carload intercoastal freight, which pays the railroads serving the Port of Baltimore, Md., and their connections not less than 10 cents per 100 pounds, or \$2.00 per ton, the freight rate will include the labor cost of 47 cents per 2000 pounds on package freight except commodities listed below and 51 cents per 2000 pounds on bulk freight and the following commodities:

Bones, in bulk.

Brick, loose.

Glassware, in packages.

Hides, loose or in bundles.

Lath, Metal, in bundles.

Lumber, loose.

Slate, loose.

Soda, nitrate of, in bags.

Staves, loose.

Steel, Greased, not boxed or crated.

Ties, Wire, in bundles.

Tile, loose.

Wire, barbed.

for loading from pier to car, and unloading from car to pier on the Canton Railroad, whether operated by the Canton Railroad or Steamship Companies or Pier Companies; will not apply on traffic handled to or from open cars on open piers or to or from open cars on outside uncovered tracks which are a part of covered piers, or on Oils, in bulk, at open or closed piers, on the Canton Railroad.

The cost of labor for loading, Pacific Intercoastal Lumber, not otherwise indexed by name in Official Classification (including wooden logs, wooden poles, wooden piling and wooden ties) and Pulpwood, carloads, into or on cars, will be in addition to the lawfully published freight rates.

LIST OF TARIFFS IN WHICH THE SPECIFIC RULES AND REGULATIONS ARE PUBLISHED

B. & O. R.R. I.C.C. Nos. 23480 and 23367.

Canton R.R. I.C.C. No. 106.

Penna. R.R. I.C.C. Nos. 2685 and 2616.

West. Md. R.R. I.C.C. Nos. 8398, 8727 and 8742.

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EXHIBIT No. 15

WITNESS: HODKINSON

I.C.C. DOCKET No. 29117

STATEMENT SETTING FORTH THE REGULATIONS OF THE RAIL CARRIERS SERVING THE PORT OF PHILADELPHIA, PA.-CAMDEN, N. J., COVERING THE SERVICE OF LOADING AND UNLOADING

CARLOAD CARRIERS

LIST OF RAILROADS SERVING PORT OF PHILADELPHIA, PA.-CAMDEN, N. J.

Baltimore and Ohio Railroad,

The Pennsylvania Railroad Company,

The Reading Company,

Pennsylvania-Reading Seashore Lines.

LOADING OR UNLOADING ATLANTIC COASTWISE DOMESTIC TRAFFIC MOVED VIA WATER LINES

The carriers will not assume the cost of loading to cars or unloading from cars of Atlantic coastwise domestic traffic, except traffic forwarded from or delivered to piers by regular lines.

Unless otherwise provided for by tariffs lawfully on file with the Interstate Commerce Commission or State Commissions, or herein, traffic received or delivered to the carriers piers from or to regularly established Steamship Lines, which pays the carriers from Philadelphia, Pa., on

inbound traffic received from said steamship lines at Philadelphia, Pa., or to Philadelphia, Pa., on outbound traffic delivered to said Steamship lines 10 cents per 100 pounds, or \$2.00 per ton, or higher, will include loading or unloading from piers to cars or cars to piers. (Subject to regulations under heading "Loading Charges on Lumber")

Where the carriers received  $13\frac{1}{2}$  cents per 100 pounds or \$2.70 per ton or higher, the service of both loading and unloading will be performed free on the same shipment at stations in Philadelphia, Pa., where the carriers are required by tariffs to perform such service. (Subject to regulations under heading "Loading Charges on Lumber")

On traffic paying less than 10 cents per 100 pounds or \$2.00 per ton when the carrier performs the service there will be an additional charge for loading or unloading from piers to cars or cars to piers of 70 cents per ton which must be added to the freight rate; the total charge, however, in such case not to exceed 10 cents per 100 pounds or \$2.00 per ton. (Subject to regulations under heading "Loading Charges on Lumber")

On traffic paying less than  $13\frac{1}{2}$  cents per 100 pounds or \$2.70 per ton when the rail carriers perform the service of both loading and unloading on the same shipment, at stations in Philadelphia, Pa., where the rail carriers are required by Tariff lawfully on file with the Interstate Commerce Commission or State Commissions, to perform such service, there will be a charge of 70 cents per ton for each service of loading and unloading, which must be added to the freight rate; the total charge, however, in such case not to exceed  $13\frac{1}{2}$  cents per 100 pounds or \$2.70 per ton (Subject to regulations under heading "Loading Charges on Lumber"). The rail carrier reserves the right to perform this service with their own facilities.

On property moving under freight rates, which are restricted to not include labor of loading and unloading, if the service is performed by the railroad, there will be an additional charge of 70 cents per ton (See Note) for loading from Piers to cars or unloading from cars to Piers when the traffic is forwarded from or delivered to the rail carriers Piers by regularly established Steamship Lines.

NOTE:—On Lumber, not otherwise indexed by name in Official Classification (including Wooden Logs, Wooden Poles, Wooden Ties and Wooden Piling) and Pulpwood, charges of 55 cents per ton of 2000 pounds for loading on open cars direct from vessel and \$1.00 per ton of 2000



pounds for loading on open cars or into closed cars from piers, intermediate storage or lighters will be assessed in addition to the freight charges.

These regulations will not apply on:

- Freight in bulk, other than Sulphur and Lumber, not otherwise indexed by name in Official Classification (including Wooden Logs, Wooden Poles, Wooden Piling and Wooden Ties) and Pulpwood, and traffic loaded in open cars at uncovered piers or unloaded at uncovered piers from open cars. (Subject to regulations under heading "Loading Charges on Lumber")
- Oils, in bulk, at either open or closed piers.

#### LOADING CHARGES ON LUMBER

(a) On Lumber, not otherwise indexed by name in Official Classification (including Wooden Logs, Wooden Poles, Wooden Ties and Wooden Piling) and Pulpwood, paying rate of 10 cents per 100 pounds or \$2.00 per 2000 pounds, or higher, a charge of 50 cents per 2000 pounds for loading on open cars direct from vessel and \$1.00 per 2000 pounds for loading on open cars or into closed cars from piers, intermediate storage or lighters, will be assessed in addition to the freight charge.

(b) On Lumber, not otherwise indexed by name in Official Classification (including Wooden Logs, Wooden Poles, Wooden Ties and Wooden Piling) and Pulpwood, paying rate of less than 10 cents per 100 pounds, or \$2.00 per 2000 pounds, a charge of 55 cents per 2000 pounds, (the total charge, however, not to exceed 12½ cents per 100 pounds or \$2.50 per 2000 pounds) for loading on open cars placed alongside of vessel, will be assessed. A charge of \$1.00 per 2000 pounds (total charge not to exceed 15 cents per 100 pounds or \$3.00 per 2000 pounds) for loading on open cars or into closed cars from piers, intermediate storage or lighters will be assessed. The above charges will be in addition to the freight charges.

#### LOADING OR UNLOADING INTERCOASTAL TRAFFIC VIA PANAMA CANAL

Unless otherwise provided by tariffs lawfully on file with the Interstate Commerce Commission or State Commissions, on Intercoastal traffic moved via Panama Canal, which pays the rail carriers from Philadelphia, Pa., on inbound traffic, or to Philadelphia, Pa., on outbound traffic, 10 cents per 100 pounds or \$2.00 per ton or higher, the rate will include loading from piers to cars or unloading from

cars to piers on both carriers piers and other public piers operated by Steamship Companies, Pier Companies, City of Philadelphia, Pa., City of Camden, N. J., or individuals (excepting piers controlled by the owners of the traffic). (Subject to regulations under heading "Loading Charges on Lumber").

462 Where the rail carriers receive  $13\frac{1}{2}$  cents per 100 pounds or \$2.70 per ton or higher, the service of both loading and unloading will be performed free on the same shipment at stations in Philadelphia, Pa., where the carriers are required by Tariffs to perform such service. (Subject to regulations under heading "Loading Charges on Lumber").

On traffic paying less than 10 cents per 100 pounds or \$2.00 per ton when the carriers perform the service, there will be an additional charge for loading or unloading of 70 cents per ton which must be added to the freight rate; the total charge, however, in such case not to exceed 10 cents per 100 pounds or \$2.00 per ton. (Subject to regulations under heading "Loading Charges on Lumber").

On traffic paying less than  $13\frac{1}{2}$  cents per 100 pounds or \$2.70 per ton, when the rail carriers perform the service of both loading and unloading on the same shipment, at stations in Philadelphia, Pa., where the rail carriers are required by Tariffs lawfully on file with the Interstate Commerce Commission or State Commissions, to perform such service, there will be a charge of 70 cents per ton for each service of loading and unloading which must be added to the freight rate; the total charge, however, in such case not to exceed  $13\frac{1}{2}$  cents per 100 pounds or \$2.70 per ton. (Subject to regulations under heading "Loading Charges on Lumber"). The rail carriers reserve the right to perform this service with their own facilities.

On property moving under freight rates, which are restricted to not include labor of loading and unloading, if the service is performed by the railroads; there will be an additional charge of 70 cents per ton (See Note); for loading from piers to cars or unloading from cars to piers on both carriers' piers and other public piers operated by Steamship Companies, Pier Companies, City of Philadelphia, Pa., City of Camden, N. J., or individuals (excepting piers controlled by the owners of the traffic).

NOTE:—On Lumber, not otherwise indexed by name in Official Classification (including Wooden Logs, Wooden Poles, Wooden Ties and Wooden Piling) and Pulpwood.

charges of 55 cents per ton of 2000 pounds for loading on open cars direct from vessel and \$1.00 per ton of 2000 pounds for loading on open cars or into closed cars from piers, intermediate storage or lighters will be assessed in addition to the freight charges.

These regulations will not apply on:

- (a) Freight in bulk (except bulk clay and ores) or on pieces and packages exceeding 3 tons in weight (See Note, under head "Loading Charges on Lumber").
- (b) Freight unloaded from open cars at uncovered piers, or freight other than Lumber not otherwise indexed by name in Official Classification (including Wooden Logs, Wooden Poles, Wooden Piling and Wooden Ties) and Pulpwood, loaded on Open Cars at uncovered piers. (Subject to regulations under heading "Loading Charges on Lumber").
- (c) Oils, in bulk, at either open or closed piers.

#### LOADING CHARGES ON LUMBER

- (a) On Lumber, not otherwise indexed by name in Official Classification (including Wooden Logs, Wooden Poles, Wooden Ties and Wooden Piling) and Pulpwood, paying rate of 10 cents per 100 pounds or \$2.00 per 2000 pounds, or higher, a charge of 50 cents per 2000 pounds for loading on open cars direct from vessel and \$1.00 per 2000 pounds for loading on open cars or into closed cars from piers, intermediate storage or lighters, will be assessed in addition to the freight charge.
- (b) On Lumber, not otherwise indexed by name in Official Classification (including Wooden Logs, Wooden Poles, Wooden Ties and Wooden Piling) and Pulpwood, paying rate of less than 10 cents per 100 pounds, or \$2.00 per 2000 pounds, a charge of 55 cents per 2000 pounds (the total charge, however, not to exceed 12½ cents per 100 pounds or \$2.50 per 2000 pounds) for loading on open cars placed alongside of vessel, will be assessed. A charge of \$1.00 per 2000 pounds (total charge not to exceed 15 cents per 100 pounds or \$3.00 per 2000 pounds) for loading on open cars or into closed cars from piers, intermediate storage or lighters will be assessed. The above charges will be in addition to the freight charges.

NOTE:—These regulations will apply when arrangements can be made for handling shipments restricted as to weight. Arrangements must be made with the Railroad Company for handling such shipments and all inquiries in reference



thereto must contain full description of the property including weight, point of shipment, steamship line or vessel to be delivered to or received from and the name of shipper or consignee.

#### LOADING OR UNLOADING EXPORT AND IMPORT TRAFFIC

Unless otherwise provided by tariffs lawfully on file with the Interstate Commerce Commission or State Commissions, on traffic destined to or received from foreign ports, which pays the rail carriers from Philadelphia, Pa., on Inbound Traffic, or to Philadelphia, Pa., on Outbound Traffic, 10 cents per 100 pounds or \$2.00 per ton, or higher, the rate will include loading from piers to cars or unloading from cars to piers on both carriers' piers and other public piers operated by Steamship Companies, Pier Companies, City of Philadelphia, Pa., City of Camden, N. J., or Individuals (excepting piers controlled by the owners of the traffic), (Subject to regulations under heading "Loading Charges on Lumber").

Where the rail carriers receive  $13\frac{1}{2}$  cents per 100 pounds or \$2.70 per ton or higher, the service of both loading and unloading will be performed free on the same shipment, at stations in Philadelphia, Pa., where the rail carriers are required by tariffs lawfully on file with the Interstate Commerce Commission or State Commission to perform such service. (Subject to regulations under heading "Loading Charges on Lumber").

On traffic paying less than 10 cents per 100 pounds or \$2.00 per ton when the rail carriers perform the service, there will be an additional charge for loading or unloading of 70 cents per ton which must be added to the freight rate; the total charge, however, in such case not to exceed 10 cents per 100 pounds or \$2.00 per ton. (Subject to regulations under heading "Loading Charges on Lumber").

On traffic paying less than  $13\frac{1}{2}$  cents per 100 pounds or \$2.70 per ton when the rail carriers perform the service of both loading and unloading on the same shipment, at stations in Philadelphia, Pa., where the rail carriers are required by Tariffs lawfully on file with the Interstate Commerce Commission or State Commissions to perform such service, there will be a charge of 70 cents per ton for each service of loading and unloading, which must be added to the freight rate; the total charge, however, in such cases not to exceed  $13\frac{1}{2}$  cents per 100 pounds or \$2.70 per ton (Subject to regulations under heading "Loading Charges on Lumber"). The carriers reserve the right to perform this service with their own facilities.

On property moving under freight rates, which are restricted to not include labor of loading and unloading, if the service is performed by the railroad, there will be an additional charge of 70 cents per ton (See Note), for loading from piers to cars or unloading from cars to piers on both carriers' piers and other public piers operated by Steamship Companies, Pier Companies, City of Philadelphia, Pa., City of Camden, N. J., or individuals (excepting piers controlled by the owners of the traffic).

NOTE:—On lumber, not otherwise indexed by name in Official Classification (including Wooden Logs, Wooden Poles, Wooden Ties and Wooden Piling) and Pulpwood, charges of 55 cents per ton of 2000 pounds for loading on open cars direct from vessel and \$1.00 per ton of 2000 pounds for loading on open cars or into closed cars from piers, intermediate storage or lighters will be assessed in addition to the freight charges.

These regulations will not apply on:

Import traffic other than Import Lumber not otherwise indexed by name in Official Classification (including Wooden Logs, Wooden Poles, Wooden Piling and Wooden Ties) and Pulpwood, when loaded on open cars at uncovered piers (Subject to regulations under heading "Loading Charges on Lumber").

Export traffic when unloaded from open cars at uncovered piers.

Bulk Grain (except Flaxseed).

Pieces or packages exceeding 3 tons in weight.

Oils, in bulk, at either open or closed piers.

#### LOADING CHARGES ON LUMBER

(a) On Lumber, not otherwise indexed by name in Official Classification (including Wooden Logs, Wooden Poles, Wooden Ties and Wooden piling) and Pulpwood, paying rate of 10 cents per 100 pounds or \$2.00 per 2000 pounds or higher, a charge of 50 cents per 2000 pounds for loading on open cars direct from vessel and \$1.00 per 2000 pounds for loading on open cars or into closed cars from piers, intermediate storage or lighters, will be assessed in addition to the freight charge.

(b) On Lumber, not otherwise indexed by name in Official Classification (including Wooden Logs, Wooden Poles, Wooden Ties and Wooden Piling) and Pulpwood, paying rate of less than 10 cents per 100 pounds, or \$2.00 per 2000 pounds, a charge of 55 cents per 2000 pounds (the total charge however, not to exceed 12½ cents per 100 pounds or

\$2.50 per 2000 pounds) for loading on open cars placed alongside of vessel will be assessed. A charge of \$1.00 per 2000 pounds (total charge not to exceed 15 cents per 100 pounds or \$3.00 per 2000 pounds) for loading on open cars or into closed cars from piers, intermediate storage or lighters will be assessed. The above charges will be in addition to the freight charges.

These regulations will apply when arrangements can be made for handling shipments restricted as to weights. Arrangements must be made with the Railroad Company for handling such shipments and all inquiries in reference thereto must contain full description of the property, including weights, point of shipment, steamship line or vessel to be delivered to or received from and the name of shipper or consignee.

LIST OF TARIFFS IN WHICH THE SPECIFIC RULES  
AND REGULATIONS ARE PUBLISHED

B&ORR I.C.C. No. 23367-23527-23491

PRR I.C.C. No. 2658

Reading Co. I.C.C. No. 2205

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EXHIBIT No. 16

WITNESS: HODKINSON

I.C.C. DOCKET No. 29117

STATEMENT SETTING FORTH THE REGULATIONS OF THE RAIL  
CARRIERS SERVING THE PORT OF WILMINGTON, DEL., COVER-  
ING THE SERVICE OF LOADING AND UNLOADING CARLOAD  
FREIGHT

LIST OF RAILROADS SERVING PORT OF WILMINGTON, DEL.

The Baltimore and Ohio Railroad Company

The Pennsylvania Railroad Company

Reading Company

LOADING OR UNLOADING OF EXPORT AND IMPORT FREIGHT

Unless otherwise provided by tariffs lawfully on file with the Interstate Commerce Commission, or herein, on freight destined to or received from foreign ports which pays the Railroads serving the Port of Wilmington, Del., and their connections 10 cents per 100 pounds or \$2.00 per ton or higher, the rate will include loading from piers to cars or unloading from cars to piers at Wilmington Marine Terminal, Wilmington, Del., (See heading "Loading Charges on Lumber").



On freight paying less than 10 cents per 100 pounds or \$2.00 per ton when the railroad performs the service, there will be an additional charge for loading or unloading of 70 cents per ton which must be added to the freight rate; the total charge however, in such case not to exceed 10 cents per 100 pounds or \$2.00 per ton (See heading "Loading Charges on Lumber"). The Railroads serving the Port of Wilmington, Del., reserves the right to perform this service with their own facilities.

Will not apply on Import Freight other than Lumber, not otherwise indexed by name in Official Classification, (including Wooden Logs, Wooden Poles, Wooden Piling and Wooden Ties) and Pulpwood, carloads; when loaded in open cars at uncovered piers of export freight when unloaded from open cars at uncovered piers, or on freight in bulk (except import bulk clay and ores), or on pieces or packages exceeding 3 tons in weight (See heading "Loading Charges on Lumber").

#### LOADING CHARGES ON LUMBER

(a) On lumber, not otherwise indexed by name in Official Classification (including wooden logs, wooden poles, wooden piling and wooden ties) and Pulpwood, paying rate of 10 cents per 100 pounds or \$2.00 per 2000 pounds, or higher, a charge of 50 cents per 2000 pounds for loading on open cars direct from vessel and \$1.00 per 2000 pounds for loading on open cars or into closed cars from piers, intermediate storage or lighters, will be assessed in addition to the freight charge.

(b) On lumber, not otherwise indexed by name in Official Classification (including wooden logs, wooden poles, wooden piling and wooden ties) and Pulpwood, paying rate of less than 10 cents per 100 pounds, or \$2.00 per 2000 pounds, a charge of 55 cents per 2000 pounds (the total charge, however, not to exceed 12½ cents per 100 pounds or \$2.50 per 2000 pounds) for loading on open cars placed alongside of vessel, will be assessed. A charge of \$1.00 per 2000 pounds (total charge not to exceed 15 cents per 100 pounds or \$3.00 per 2000 pounds) for loading on open cars or into closed cars from piers, intermediate storage or lighters will be assessed. The above charges will be in addition to the freight charge.

#### LOADING OR UNLOADING INTERCOASTAL FREIGHT MOVED VIA PANAMA CANAL

Unless otherwise provided by tariffs lawfully on file with the Interstate Commerce Commission, or herein, on inter-

coastal freight moved via Panama Canal, which pays the Railroads serving the Port of Wilmington, Del., and their connections 10 cents per 100 pounds or \$2.00 per ton or higher, the rate will include loading from piers to cars or unloading from cars to piers at Wilmington Marine Terminal, Wilmington, Del., (See heading "Loading Charges on Lumber").

On freight paying less than 10 cents per 100 pounds or \$2.00 per ton when the railroad performs the service, there will be an additional charge for loading or unloading of 70 cents per ton, which must be added to the freight rate; the total charge, however, in such case not to exceed 10 cents per 100 pounds or \$2.00 per ton. (See heading "Loading Charges on Lumber"). The Railroads serving the Port of Wilmington, Del., reserve the right to perform this service with their own facilities.

Will not apply on freight other than Lumber, not otherwise indexed by name in Official Classification, (including wooden logs, wooden poles, wooden piling and wooden Ties) and Pulpwood, earloads, loaded in open cars at uncovered piers or on freight at uncovered piers from open cars; or on freight in bulk, or on pieces or packages exceeding 3 tons in weight. (See heading "Loading Charges on Lumber").

#### LOADING CHARGES ON LUMBER

(a) On lumber, not otherwise indexed by name in Official Classification (including wooden logs, wooden poles, wooden piling and wooden ties) and Pulpwood, paying rate of 10 cents per 100 pounds or \$2.00 per 2000 pounds, or higher, a charge of 50 cents per 2000 pounds for loading on open cars direct from vessel and \$1.00 per 2000 pounds for loading on open cars or into closed cars from piers, intermediate storage or lighters, will be assessed in addition to the freight charge.

(b) On lumber, not otherwise indexed by name in Official Classification (including wooden logs, wooden poles, wooden piling and wooden ties) and Pulpwood, paying rate of less than 10 cents per 100 pounds, or \$2.00 per 2000 pounds, a charge of 55 cents per 2000 pounds (the total charge, however, not to exceed 12½ cents per 100 pounds or \$2.50 per 2000 pounds) for loading on open cars placed alongside of vessel, will be assessed. A charge of \$1.00 per 2000 pounds (total charge not to exceed 15 cents per 100 pounds or \$3.00 per 2000 pounds) for loading on open cars or into closed cars from piers, intermediate storage or lighters will be assessed. The above charge will be in addition to the freight charges.

## LOADING AND UNLOADING EXPORT, IMPORT, INTERCOASTAL AND COASTWISE FREIGHT

On property moving under freight rates, which are restricted to not include labor of loading and unloading, if the service is performed by the railroad, there will be an additional charge of 70 cents per ton (See Note) for loading from piers to cars or unloading from cars to piers at Wilmington Marine Terminal, Wilmington, Del.

NOTE:—On Lumber, not otherwise indexed by name in Official Classification (including logs, wooden poles, wooden ties and wooden piling) and Pulpwood charges of 55 cents per ton of 2,000 pounds for loading on open cars direct from vessel and \$1.00 per ton of 2,000 pounds for loading on open cars or into closed cars from piers, intermediate storage or lighters will be assessed in addition to the freight charges.

The Railroads serving the Port of Wilmington, Del. reserve the right to perform this service with its own facilities.

### LOADING AND UNLOADING OF SULPHUR, IN BULK, MOVING IN DOMESTIC COASTWISE SERVICE

The Railroads serving the Port of Wilmington, Del. will assume the cost of loading to cars or unloading from cars, sulphur, in bulk, at the Wilmington Marine Terminal, Wilmington, Del., moving in domestic coastwise service, when the freight rate pays the Railroads serving the Port of Wilmington, Del., and their rail connections 10 cents per 100 pounds or \$2.00 per ton or higher.

Where the Railroads serving the Port of Wilmington, Del., and their rail connections receive less than 10 cents per 100 pounds or \$2.00 per ton, there will be an additional charge for loading or unloading from piers to cars or cars to piers at the Wilmington Marine Terminal, Wilmington, Del., of 70 cents per ton, which must be added to the freight charges: the total charge, however, in such case not to exceed 10 cents per 100 pounds or \$2.00 per ton.

These Regulations will not apply on traffic loaded in open cars at uncovered piers, or unloaded at uncovered piers from open cars. (See heading "Loading Charges on Lumber").

### LIST OF TARIFFS IN WHICH THE SPECIFIC RULES AND REGULATIONS ARE PUBLISHED

B.&O.R.R. I.C.C. No. 23528.

Pennsylvania R.R. I.C.C. No. 2665.

Reading Company I.C.C. No. 2205.



EXHIBIT No. 17

WITNESS: HODKINSON

I.C.C. DOCKET 29117

STATEMENT SETTING FORTH THE REGULATIONS OF THE RAIL  
CARRIERS SERVING THE PORT OF CHESTER—MARCUS HOOK,  
PA., COVERING THE SERVICE OF LOADING AND  
UNLOADING CARLOAD FREIGHT

LIST OF RAILROADS SERVING PORT OF CHESTER, PA.

Pennsylvania Railroad Company,  
The Reading Company..

LOADING AND UNLOADING ATLANTIC COASTWISE DOMESTIC  
TRAFFIC MOVED VIA WATER LINES

Unless otherwise provided for by the tariffs lawfully on file with the Interstate Commerce Commission or State Commission, or herein, on coastwise traffic received or delivered to Railroad piers, which pays the rail carrier and its connections 10 cents per 100 pounds or \$2.00 per ton or higher, the rate will include loading or unloading from piers to cars or cars to piers, except Lumber, not otherwise indexed by name in Official Classification I.C.C.—O.C. 60, Pa. P.U.C.—O.C. 60, (A. H. Greenly, Agent) (including Wooden Logs, Wooden Poles, Wooden Piling and Wooden Ties) and Pulpwood, carloads, and freight in bulk, and except all traffic loaded or unloaded from or to open cars at uncovered piers.

On traffic paying less than 10 cents per 100 pounds or \$2.00 per ton, there will be an additional charge for loading or unloading from piers to cars or cars to piers of 70 cents per ton, which must be added to the freight rates, total charge, however, in such cases not to exceed 10 cents per 100 pounds or \$2.00 per ton, except lumber, not otherwise indexed by name in Official Classification, I.C.C.—O.C. 60, Pa. P.U.C.—O.C. 60 (A. H. Greenly, Agent) (including Wooden Logs, Wooden Poles, Wooden Piling and Wooden Ties) and Pulpwood, carloads, and freight in bulk, and except all traffic loaded or unloaded from or to open cars at uncovered piers.

LOADING AND UNLOADING INTERCOASTAL TRAFFIC  
MOVED VIA PANAMA CANAL

Unless otherwise provided by tariffs lawfully on file with the Interstate Commerce Commission or State Com-

mission or herein, on Intercoastal traffic moved via Panama Canal, which pays the rail carrier and its connections 10 cents per 100 pounds, or \$2.00 per ton, or higher, the rate will include loading from piers to cars or unloading from cars to piers when the traffic is handled over carriers' piers or the piers of the South Chester Terminal and Warehousing Company, Chester, Pa.

On traffic paying less than 10 cents per 100 pounds or \$2.00 per ton when the rail carrier performs the service there will be an additional charge for loading or unloading of 70 cents per ton, which must be added to the freight rate; the total charge, however, in such cases not to exceed 10 cents per 100 pounds or \$2.00 per ton (subject to regulations under heading **LOADING CHARGES ON LUMBER**). The rail carriers reserve the right to perform this service with its own facilities.

These regulations will not apply on:

(a) Freight in bulk (except Bulk Clay and Ores), or on pieces of packages exceeding 3 tons in weight. (See Note).

NOTE—When arrangements can be made for handling of pieces or packages exceeding 3 tons each in weight, this rule will apply, when the charge for handling from or to car does not exceed 3 cents per 100 pounds. Any amount over 3 cents per 100 pounds must be assumed by the shipper, consignee or owner of the property. Such arrangements must be made with the railroad company and information furnished, giving a full description of the property, including weight, place or steamship line to be delivered to or received from, and the name of the shipper or consignee.

(b) Freight loaded in open cars at uncovered piers, or unloaded at uncovered piers from open cars (subject to regulations under heading **LOADING CHARGES ON LUMBER**).

#### **LOADING CHARGES ON LUMBER**

(a) On Lumber, not otherwise indexed by name in Official Classification, I.C.C.—O.C. 60. Pa. P.U.C.—O.C. 60, (A. H. Greenly, Agent), (including Wooden Logs, Wooden Poles, Wooden Ties and Wooden Piling) and Pulpwood, paying rate of 10 cents per 100 pounds or \$2.00 per 2000 pounds, or higher, a charge of 50 cents per 2000 pounds for loading on open cars direct from vessel and \$1.00 per 2000 pounds for loading on open cars or into closed cars from piers, intermediate storage or lighters, will be assessed in addition to the freight charges.

(b) On Lumber, not otherwise indexed by name in Official Classification I.C.C.—O.C. 60. Pa. P.U.C.—O.C. 60,

(A. H. Greenly, Agent), (including Wooden Logs, Wooden Poles, Wooden Ties and Wooden Piling)-and Pulpwood, paying rate of less than 10 cents per 100 pounds, or \$2.00 per 2000 pounds, a charge of 55 cents per 2000 pounds (the total charge, however, not to exceed 12½ cents per 100 pounds or \$2.50 per 2000 pounds) for loading on open cars placed alongside of vessel, will be assessed. A charge of \$1.00 per 2000 pounds (total charge not to exceed 15 cents per 100 pounds or \$3.00 per 2000 pounds) for loading on open cars or into closed cars from piers, intermediate storage or lighters will be assessed. The above charges will be in addition to the freight charges.

#### LOADING AND UNLOADING EXPORT AND IMPORT FREIGHT

Unless otherwise provided by tariffs lawfully on file with the Interstate Commerce Commission, or herein, on traffic destined to or from foreign ports, which pays the rail carrier and their connections 10 cents per 100 pounds or \$2.00 per ton or higher, the rate will include loading from piers to cars or unloading from cars to piers when the traffic is handled over carriers' piers, or the piers of the South Chester Terminal and Warehousing Company, Chester, Pa. (subject to regulations under heading **LOADING CHARGES ON LUMBER**).

On traffic paying less than 10 cents per 100 pounds or \$2.00 per ton when the railroad performs this service there will be an additional charge for loading or unloading of 70 cents per ton, which must be added to the freight rate. The total charge, however, in such case not to exceed 10 cents per 100 pounds, or \$2.00 per ton. (Subject to regulations under heading **LOADING CHARGES ON LUMBER**.) The rail carriers reserve the right to perform this service with its own facilities.

This rule will not apply on traffic loaded in open cars at uncovered piers or unloaded at uncovered piers from open cars, or on Freight in bulk (except Import Bulk Clay, Cornwall Stone and Dres), or pieces or packages exceeding three tons in weight.

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#### LOADING AND UNLOADING EXPORT AND IMPORT FREIGHT (Continued)

(a) On Lumber, not otherwise indexed by name in Official Classification I. C. C.—O. C. 60, Pa. P. H. C.—O. C. 60 (A. H. Greenly, Agent), (including wooden logs, wooden poles, wooden ties and wooden piling) and Pulpwood, pay-



ing rate of 10 cents per 100 pounds or \$2.00 per 2000 pounds, or higher, a charge of 50 cents per 2000 pounds for loading on open cars direct from vessel and \$1.00 per 2000 pounds for loading on open cars or into closed cars from piers, intermediate storage or lighters, will be assessed in addition to the freight charge.

(b) On Lumber, not otherwise indexed by name in Official Classification I. C. C.—O. C. 60, Pa. R. U. C.—O. C. 60 (A. H. Greenly, Agent), (including wooden logs, wooden poles, wooden ties and wooden piling) and Pulpwood, paying a rate of less than 10 cents per 100 pounds, or \$2.00 per 2000 pounds, a charge of 55 cents per 2000 pounds (the total charge, however, not to exceed  $12\frac{1}{2}$  cents per 100 pounds or \$2.50 per 2000 pounds) for loading on open cars placed alongside of vessel, will be assessed. A charge of \$1.00 per 2000 pounds (total charge not to exceed 15 cents per 100 pounds or \$3.00 per 2000 pounds) for loading on open cars or into closed cars from piers, intermediate storage or lighters, will be assessed. The above charges will be in addition to the Freight Charges.

#### EXPORT, IMPORT AND INTERCOASTAL TRAFFIC MOVING VIA PANAMA CANAL

On property moving under freight rates, which are restricted to not include labor of loading and unloading, if the service is performed by the railroad, there will be an additional charge of 70 cents per ton (See Note), for loading from piers to cars and unloading from cars to piers when the traffic is handled over piers operated by the Railroads or the piers of the South Chester Terminal and Warehousing Company.

NOTE:—On Lumber, not otherwise indexed by name in Official Classification (including Logs, Wooden Poles, Wooden Ties and Wooden Piling) and Pulpwood, charges of 55 cents per ton of 2,000 pounds for loading on open cars direct from vessel and \$1.00 per ton of 2,000 pounds for loading on open cars or into closed cars from piers, intermediate storage or lighters will be assessed in addition to the freight charges.

The provisions of these regulations will not apply on—

- (a) Traffic loaded on or unloaded from open cars at uncovered piers.
- (b) Freight in bulk (except bulk Clay and Ores), nor on pieces or packages exceeding three (3) tons in weight, nor on pieces of extraordinary dimensions, nor upon

pieces or packages or extraordinary measurement or size as compared with the weight thereof.

LIST OF TARIFFS IN WHICH THE SPECIFIC  
RULES AND REGULATIONS ARE PUBLISHED

PRR I.C.C. 2689

Rdg Co. I.C.C. 2205

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EXHIBIT No. 20

WITNESS: HODKINSON,

I.C.C. DOCKET No. 29117

RULE GOVERNING THE LOADING AND UNLOADING OF FREIGHT  
BY RAIL CARRIERS AS PUBLISHED IN THE  
CONSOLIDATED FREIGHT CLASSIFICATION No. 16

Consolidated Freight Classification No. 16.

Agent A. H. Greenly I. C. C.—O. C. No. 60—Page 133

RULE No. 27

LOADING AND UNLOADING

SECTION 1—Owners are required to load into or on cars freight for forwarding by rail carriers, and to unload from cars freight received by rail carriers, carried at C. L. ratings or rates, except where tariff of carrier at point of origin or destination or stop over station (as the case may be) provides for loading or unloading of C. L. freight by carrier.

SECTION 2—Owners are required to load into or on cars heavy or bulky freight for forwarding by rail carriers, and to unload from cars heavy or bulky freight received by rail carriers, carried at L. C. L. ratings which cannot be handled by regular station employees or at stations where carrier's loading or unloading facilities are not sufficient for handling.

SECTION 3—Shippers must observe carrier's rules regulating safe loading of freight and protection of equipment. Freight in closed cars must be so loaded as to prevent any contact with car doors during transit, and weight of lading must be approximately the same on each side.

SECTION 4—When articles are loaded on open cars, small detachable parts must be removed and placed in barrels or boxes or secured within the article. Barrels and boxes must be encircled at ends with iron straps and securely attached to the article or to floor of car. Such barrels or boxes must be specified on shipping orders and bills of lading. Fragile parts not detached must be protected.

EXHIBIT No. 21

WITNESS: NEILSON

I.C.C. DOCKET No. 29117

CONSISTING OF 1 PAGE

Statement Showing Industries Using Privately Owned or Privately Operated Facilities, Located within the Baltimore, Md., Port Terminal Area, having Both a Railroad Siding and a Deepwater Pier, where Carload Freight May be Interchanged Between Railroad Cars and Vessels.

## INDUSTRIES

American Agricultural Chemical Co. ....  
 American Oil Co. ....  
 American Smelting and Refining Co. ....  
 American Sugar Refinery ....  
 Arcrods Corporation ....  
 Arundel Corporation ....  
 Atlas Pier and Terminal Co. ....  
 Baltimore Fidelity Warehouse Co. Canton Warehouse ....  
 Baugh and Sons Co. ....  
 Bethlehem-Sparrows Point Shipyard, Inc. ....  
 Bethlehem Steel Co. ....  
 Central Oil Emulsion Corp. of Delaware ....  
 Co-Operative Mills Inc. ....  
 Consolidated Gas Electric Light and Power Co. ....  
 Continental Oil Co. ....  
 Davidson Chemical Co. ....  
 Fertilizer Mfg. Co-Operatives, Inc. ....  
 General Chemical Co. ....  
 Maryland Dry Dock Co. ....  
 Maryland Slag Co. ....  
 Menhaden Fish Products Co. ....  
 Mexican Petroleum Co. ....  
 Municipal Pier No. 2, Pratt Street ....  
 Municipal Pier No. 4, Pratt Street ....  
 Nelson Corp. ....  
 Petrol Corporation ....  
 Proctor & Gamble Co. ....  
 Rheem's Mfg. Co. ....  
 Richfield Corporation of New York ....  
 Rukert Terminal Corporation ....  
 Seaboard Asphalt Products ....  
 Sherwood Bros. ....  
 Standard Oil Co. ....



Standard Slag Co. ....  
 Struven and Co., Charles M. ....  
 Sugar House Pier (Leased to Boston Iron and Metal Co.) ...  
 Terminal Warehouse Co., Bond Street Wharf .....  
 Texas Co. ....  
 Tide Water Associated Oil Co. ....  
 United States Industrial Chemical Co. ....  
 Weyerhaeuser Timber Co. ....

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EXHIBIT No. 21

WITNESS: .....

I.C.C. DOCKET No. 29117

CONSISTING OF 1 PAGE

Statement Showing Industries Using Privately Owned or  
 Privately Operated Facilities, Located within the  
 Philadelphia, Pa., Port Terminal Area, Having Both a  
 Railroad Siding and a Deepwater Pier, Where Carload  
 Freight May be Interchanged Between Railroad Cars  
 and Vessels

## INDUSTRY

American Oil Company .....  
 Ashenfelter, W. C. & Sons .....  
 Atlantic Refining Company .....  
 Barrett Company .....  
 Baugh & Company .....  
 Bisbee Linseed Company .....  
 Cities Service Oil Company (Petty's Island, N. J.) .....  
 City Asphalt Wharf .....  
 Cramp Shipbuilding Company .....  
 DuPont De Nemours, E. I. & Company .....  
 Foreman Blades Lumber Company .....  
 Franklin Sugar Refining Company .....  
 Gulf Oil Corporation .....  
 Kensington Shipyard Company .....  
 Kieckhefer Container Company (Delair, N. J.) .....  
 Liberty Corporation .....  
 Malone, Warson & Sons .....  
 McCahan Sugar Refining Company .....  
 Motor Real Estate Company (Phila. Trains. Company) .....  
 Northern Metals Company .....  
 Ontario Land Company .....  
 Patterson, J. M. & Company .....  
 Pennsylvania Life Insurance (Formerly Hanson's Lum-  
 ber Yard) .....

Penna Salt Manufacturing Company .....  
 Penna Sugar Company .....  
 Petrol Corporation .....  
 Philadelphia Coke Company .....  
 Philadelphia Electric Company .....  
 Philadelphia Gas Works .....  
 Philadelphia Transportation Company .....  
 Public Service Corp. (Camden Coke Plant) (Camden, N. J.) .....  
 Publicker Commercial Alcohol Company .....  
 Shell Oil Company .....  
 Shoemaker, M. L. ....  
 Smith, G. W. & Sons .....  
 Terminal Warehouse Company .....  
 Tidewater Oil Sales Company .....  
 Union Paving Company .....  
 U. S. Gypsum Company .....  
 Warner Company .....

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EXHIBIT No. 21

WITNESS: .....

I.C.C. DOCKET No. 29117

CONSISTING OF 1 PAGE

Statement Showing Industries Using Privately Owned or  
 Privately Operated Facilities, Located within the Various  
 Port Terminal Areas Listed Below, Having Both a Rail-  
 road Siding and a Deepwater Pier, where Carload  
 Freight may be Interchanged Between Railroad Cars  
 and Vessels.

## INDUSTRIES

## Location.

Armstrong Cork Company .....	Gloucester, N. J.
Baldwin Locomotive Works .....	Eddystone, Penn.
DuPont De Nemours, E. I. & Com- pany .....	Carney's Point, N. J.
General Chemical Company .....	North Claymont, Del.
Texas Company .....	" " "
Thomas, I. P. Company .....	Paulsboro, N. J.
Socony-Vacuum Oil Company .....	" " "

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EXHIBIT No. 21

WITNESS: .....

I.C.C. DOCKET No. 29117

CONSISTING OF 1 PAGE

Statement Showing Industries Using Privately Owned or  
 Privately Operated Facilities, Located within the Chester-

Marcus Hook, Pa., Port Terminal Area, Having Both a Railroad Siding and a Deepwater Pier, where Carload Freight May be Interchanged Between Railroad Cars and Vessels.

INDUSTRIES	Location
Philadelphia Electric Company . . .	Chester, Pa.
Pittsburgh Ferro Manganese Company (Delaware River Steel Co.)	" "
Scott Paper Company . . . . .	" "
Sun Shipbuilding & Drydock Company . . . . .	" "
Sinclair Refining Company . . . . .	Marcus Hook, Pa.
Sun Oil Company . . . . .	" " "

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EXHIBIT No. 21  
 WITNESS: HODKINSON  
 I.C.C. DOCKER No. 29117  
 CONSISTING OF 1 PAGE

Statement Showing Industries Using Privately Owned or Privately Operated Facilities, Located within the Port Newark and Newark, N. J., Port Terminal Areas, Having Both a Railroad Siding and a Deepwater Pier, where Carload Freight May be Interchanged Between Railroad Cars and Vessels.

## INDUSTRY

American Aviation Oil Co. . . . .  
 American Lumber and Treating Co. . . . .  
 Benjamin Moore and Co. . . . .  
 Callaghan, J. P. (Atlantic Refining Co.) . . . . .  
 Eagle-Picher Lead Co. . . . .  
 Federal Iron and Metal Co. . . . .  
 Federal Ship and Drydock Co. . . . .  
 Furness-Withy Co. . . . .  
 Hudson Oil Co. . . . .  
 Lockheed Overseas Corporation . . . . .  
 Newark Tidewater Terminal . . . . .  
 Sherwin-Williams Co. . . . .  
 Sun Oil Co. . . . .  
 Swan Finch Oil Co. . . . .  
 Texas Co. . . . .  
 United Cork Co. . . . .  
 U. S. Army Air Corps . . . . .  
 Western Electric Co. . . . .  
 Weyerhaeuser Co. . . . .



DEFENDANT'S EXHIBIT No. 25

ICC DOCKET No. 29117

WITNESS: W. W. WOLFORD

REPRODUCTION OF UNIFORM OR STANDARD FORM OF AGREEMENT  
ENTERED INTO BETWEEN THE SEABOARD RY. AND SUCH TER-  
MINAL OPERATORS AS IT MAY ELECT TO AUTHORIZE TO PER-  
FORM THE TERMINAL SERVICES RAILROAD OBLIGATES ITSELF  
TO PERFORM UNDER RATES GIVEN SHIPSIDE APPLICATION.

THIS AGREEMENT MADE THIS \_\_\_\_\_ DAY OF \_\_\_\_\_  
between \_\_\_\_\_, a corporation organized  
and existing under the laws of \_\_\_\_\_, party  
of the first part, hereinafter referred to as the Terminal,  
and severally and not jointly, \_\_\_\_\_,  
L. R. Powell, Jr. and Henry W. Anderson, Receivers of  
SEABOARD AIR LINE RAILWAY COMPANY \_\_\_\_\_,  
parties of the second part, each acting for itself and not  
jointly, hereinafter referred to as the Carriers:

WHEREAS, The Terminal operates public wharves and  
warehouses located on \_\_\_\_\_ Street in the City of  
Norfolk, Virginia,

AND WHEREAS, The Terminal is willing and desirous of  
permitting the use of \_\_\_\_\_ said  
piers and their appurtenances, as shown by \_\_\_\_\_  
blueprint attached hereto and made a part hereof, as a  
terminal for the use of said Carriers, and to perform serv-  
ices for the said Carriers, as hereinafter set forth:

AND WHEREAS, The parties to this agreement desire to  
cooperate with each other in order that the aforesaid facili-  
ties of the Terminal may be made available to the fullest  
extent for the development of rail-water-borne traffic, may  
contribute to the upbuilding of the business of the respec-  
tive companies parties to this agreement and to the busi-  
ness of the Port of Norfolk.

AND WHEREAS, To this end the parties hereto desire to  
enter into an agreement with respect to the handling and  
storage of merchandise of all kinds at the said Terminal;

NOW THEREFORE, This agreement witnesseth that in con-  
sideration of the premises and of the covenants and agree-  
ments on the part of each party hereto to be observed, kept  
and performed, it is hereby mutually covenanted, stipulated  
and agreed by and between the parties hereto as follows:

(1) That as to export, import, intercoastal and coast-  
wise freight traffic (other than traffic moving on joint  
through rates via regular coastwise lines operating to and  
from North Atlantic Ports), interchanged with watercraft  
over the piers and/or wharves within the area outlined in

red on the attached blueprint, in carload lots, also in less than carload lots, the Carriers shall and will take and deliver the same over their lines at the same basis of rates as applies to and from their Norfolk stations immediately adjacent thereto, as contained in Carriers' published tariffs, and in the same manner and with the same promptness that they deliver and receive like traffic at any other terminal point controlled by them in the City of Norfolk. Nothing in this paragraph shall be construed to require the absorption of any terminal charges contrary to the provisions of paragraph (3) hereof.

(2) That on export, import, intercoastal and coastwise freight traffic (other than traffic moving on joint through rates via regular coastwise lines operating to and from North Atlantic ports) in carload lots, also in less than carload lots, handled by lighter or car-float to or from the piers and warehouses of the Terminal, the Carriers will make no charge for lighterage service, or floating service, provided the origin or destination and route of such traffic be such as will afford the Carriers a line-haul beyond the Norfolk switching district.

(3) That on export, import, intercoastal and coastwise freight traffic (other than traffic moving on joint through rates via regular coastwise lines operating to and from North Atlantic ports) in carload lots, also in less than carload lots, handled for account of the Carriers by the Terminal where the tariffs of the Carriers provide that rates to or from their own terminals at Pinners Point, Portsmouth, or Berkeley, Virginia, as their respective interests may appear, include wharfage and/or handling charges and/or where the tariffs of the Carriers provide that wharfage and/or handling charges at their own terminals at Pinners Point, Portsmouth or Berkeley, Virginia, as their respective interests may appear, shall be absorbed in the freight rates to and/or from Norfolk, the Carriers will on traffic competitive with other Norfolk carriers absorb wharfage and/or handling charges at the piers and warehouses of the said Terminal in the same manner and to the same extent that they absorb at their own terminals at Pinners Point, Portsmouth or Berkeley, Virginia, as their respective interests may appear, such absorption, however, for wharfage charges not to exceed one (1) cent per 100 pounds, and for handling charges not to exceed three (3) cents per 100 pounds, or sixty (60) cents per ton, net or gross, as rated, and that no handling charge will be absorbed on freight in open top cars, grain in bulk or freight

in tank cars, and that the provisions in regard to absorbing the charges shall not apply to traffic that is the property of the Terminal. On traffic not competitive with other Norfolk carriers, these absorptions of the Carriers are not to exceed the amounts absorbed at their own terminals.

The absorption of all wharfage and handling charges by the Carriers shall be on basis of actual weight handled by the Terminal, except that on less than carload shipments the minimum wharfage and handling charges as published in governing tariffs will be allowed the Terminal.

(4) That where the Carriers' tariffs do not provide that wharfage and/or handling charges shall be absorbed in the freight rate, the Carriers shall publish in their tariffs the same added wharfage and/or handling charges to apply on traffic moving over the piers and warehouses of the Terminal as are effective at the Carriers' own terminals at Pinner's Point, Portsmouth and Berkeley, Virginia, as their respective interests may appear. Such added wharfage and/or handling charges shall accrue to the Terminal to the extent that such allowances are provided for in Carriers' legally published tariffs and shall be calculated on basis of actual weight handled by the Terminal, except that on less than carload shipments the minimum wharfage and handling charges as published in governing tariffs will be allowed to the Terminal.

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DEFENDANTS' EXHIBIT No. 25

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475 (5) The Terminal will permit the Carriers to use the portions of the premises outlined \_\_\_\_\_ on said blueprint hereto attached and heretofore made a part hereof, as terminals for the use of the Carriers, and will perform services for the Carriers as hereinafter set forth.

(6) The Terminal agrees to make every reasonable effort to load and unload cars or lighters promptly and to reduce car and lighter delay to a minimum.

(7) The Terminal shall provide the necessary organization and employees to perform the labor of loading and unloading cars of lighters and to check freight from or to the Terminal.

(8) The Terminal shall where requested by the Carriers be responsible to them for collection of freight charges as per freight bills rendered by the Carriers and any other charges lawfully assessed against the property transported; and shall comply with the laws with regard to collection



of such charges by common carriers and with lawful orders of Government authorities of competent jurisdiction affecting such collection by common carriers.

(9) The charges collected by the Terminal and due to the Carriers shall be paid by the Terminal to the Carriers in accordance with the rules and regulations prescribed by proper officers of the respective Carriers.

(10) The Terminal agrees to be responsible to the Carriers for any improper delivery of goods entrusted to its possession under the terms of this contract.

(11) That on all freight delivered to the Terminal by the Carriers, the Terminal agrees to assume the duties and obligations imposed by law upon a delivering carrier and/or as defined in rules of The Association of American Railroads (Freight Claim Division), upon a terminal carrier. It is understood that deliveries shall have been made when cars, car-floats or lighters have had their first placement at the wharf adjacent to the piers and/or warehouses of the Terminal.

(12) That on all freight to be delivered to the Carriers by the Terminal, the Terminal will be responsible until such freight is in proper shipping condition and is loaded into the cars or lighters and bill-of-lading and shipping order come into the possession of the Carriers. That in the adjustment of claims on such freight the Terminal will assume the duties and obligations imposed by law upon a forwarding carrier and/or as defined in the rules of The Association of American Railroads (Freight Claim Division) upon an initial carrier.

(13) The Terminal will indemnify the Carriers and save them harmless to the extent of their common carrier or warehouseman's liability, as the case may be, in the event of any claims for loss or damage to freight in the Terminal's possession, as per the preceding covenants, Nos. 11 and 12, including loss or damage by fire.

(14) And the Terminal, when acting as agent of the Carriers will make no charge against the owners of freight or any other persons for the storage thereof, or for other services rendered by the Terminal in connection therewith during the period of free time established by the duly published tariffs of the Carriers for whose account the freight is handled. It is understood that such free time shall be computed in accordance with the rules of the published tariffs, whether the traffic is held in cars or on lighters or on the premises of the Terminal.

(15) That with respect to export, import, intercoastal and coastwise freight handled for account of or on the

premises used by the Carriers, the Terminal shall make the same charges for any services in connection therewith as is contemporaneously maintained by the Carriers in their published tariffs for similar services at their own terminals in Norfolk, Pinner's Point, Portsmouth or Berkeley, as their respective interests may appear, which shall include the collection of the same charges for storage after expiration of the free time as contained in published tariffs of the Carriers and which storage charges shall accrue to the Terminal, except that this is not intended to apply to freight which may be on long-time storage.

(16) The Terminal agrees that when freight is unloaded in the portion of the premises of the Terminal used for railroad terminal purposes and subsequently is moved from said portion to another portion of the premises, or moved from such other portion of the portion used for railroad terminal purposes, as described in the attached blueprint, the expense of such handling shall not be borne by the carriers, except as may be provided for in their published tariffs.

On such traffic received from watercraft in the areas hereinbefore designated on the blueprint attached hereto, and subsequently loaded to cars outside the said areas for rail movement, and on such traffic unloaded from cars outside the said areas which subsequently passes over said areas and is delivered to watercraft the Carriers will make the same wharfage and handling allowances as if the wharfage and handling services had been performed in the said areas, and the Carriers reserve the right to police and verify all such operations.

(17) The Terminal shall act as agents of the Carriers in the matter of receipt and delivery of the Carriers' export, import, coastwise and intercoastal freight handled under this agreement, as well as in the collection of Carriers' charges thereon, pursuant to Covenants Nos. 8 and 9, and likewise for the custody of property while on the premises used for the Carriers. After the expiration of free time, as provided in the applicable tariffs of the Carriers, the Terminal shall, when requested to, or authorized by the Carriers, remove the property from that portion of the premises used for Carriers' purposes, as hereto-

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476 fore designated on the attached blueprint, and shall receipt to the Carriers therefor, and the legal possession on the part of the Carriers shall then cease and deter-

mine, and such legal possession shall then be, and thereafter continue to be, that of the Terminal, which shall hold or dispose of such property at its own responsibility and in such way as may be lawful. The intent of this part of the agreement is that after the property is removed from the premises used for railroad purposes, as described above, the property shall be considered to be in a public or licensed warehouse.

(18) The Terminal agrees that it will enforce on all traffic moving over the areas outlined on the attached blueprint, whether handled by rail, highway vehicle or river and canal carrier, the same rules and regulations, and assess and collect the same charges, as are contemporaneously enforced, assessed and collected at the Carriers' terminals at Norfolk, Pinners Point, Portsmouth or Berkeley, as their respective interests may appear, on like traffic.

It is a condition of this agreement that the Terminal shall maintain record of receipts and dispositions, and make sworn statements when required as to the collection thereon of the charges applicable to the freight transported by highway vehicles and river and canal carriers.

(19) The Terminal will execute and deliver to the Carriers a bond in such form and with such corporate surety as may be approved by the Carriers, payable to the Carriers as their respective interests may appear, in the penalty of \_\_\_\_\_ dollars (\$ \_\_\_\_\_), conditioned for the faithful performance of all of the covenants of the Terminal in this agreement. The Terminal will also furnish, in addition, insurance protecting the risk of the Carriers, payable to the Carriers, as their respective interests may appear to the extent of \_\_\_\_\_ dollars (\$ \_\_\_\_\_), the Carriers to be furnished by the Terminal with proper instrument certifying that such insurance has been put in force. And the Terminal will at all times during the continuance of this agreement keep said bond and said insurance in full force and effect.

(20) The Terminal will promptly notify the carriers in writing of the failure of any consignee to remove freight, and so long as it holds the said freight for account of the Carriers, will observe and comply with all directions with respect to such freight which may be received by it from the Carriers.

(21) The Terminal will protect and indemnify the Carriers from and against all manner of liability on account of any acts of omission or commission on the part of it,



the Terminal, with respect to merchandise handled by said Terminal under this agreement, and also from and against all manner of liability on account of receipts for merchandise issued by it.

(22) The Terminal will not perform a common carrier service or make a charge therefor until such service and charge are covered by the Carriers' tariffs lawfully effective.

(23) That wherever the services performed and charge assessed by the Terminal under this agreement are covered or are to be covered by tariffs, classifications, rules and regulations of the Carriers, it is understood that the Terminal is to act as agent of the Carriers and to strictly comply with their publications and the laws and/or lawful orders of Government authorities of competent jurisdictions, and that the Terminal will indemnify the Carriers for all damage or expense it may incur by reason of the Terminal's violation of this understanding.

(24) While the Terminal is acting as agent of the Carriers, it agrees not to act as agent for the shipper for the assembling of less than carload lots of freight into carload or less than carload shipments or as agent of the consignee for the distribution to more than one consignee of carload or less than carload freight in any manner contrary to the tariffs, classifications, rules and regulations of the Carriers.

(25) The Terminal will keep the said warehouse and premises in good order and repair and properly equipped for the prompt and effective handling of the traffic delivered to and received from it by the Carriers.

(26) The Terminal shall fully indemnify and save harmless the Carriers, their assigns and successors, from and against any and all claims and demands whatsoever, actions, suits, costs, recoveries, judgments, or executions, which may be made, brought, recovered, or levied against the aforesaid Carriers, their assigns or successors, or which the aforesaid Carriers, their assigns or successors, may sustain or incur by reason of the negligence of the aforesaid Terminal.

(27) The Terminal shall fully indemnify and save harmless the Carriers, their assigns and successors, from and against any and all loss and damage, which the aforesaid Carriers, their assigns or successors, may sustain or incur as a result of any disregard or violation of the aforesaid Terminal of the aforesaid matters, or any of them, specified by this agreement.

(28). It is further agreed that no assignments of this agreement shall be valid without the consent of the Carriers, and that this shall apply as well to involuntary assignments, and that upon the happenings of any legal proceedings the effect of which shall be to divest the title or possession of the said Terminal, this agreement shall, at the option of the Carriers cease and determine.

(29) This agreement shall take effect as of the \_\_\_\_\_ day of \_\_\_\_\_, and shall continue in force and effect until terminated by any party hereto giving to the other party ninety (90) days' notice in writing of its desire and intention to terminate the same, it being understood and

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agreed that any party hereto may at any time cancel this contract by giving to the other party ninety (90) days' notice in writing of its intention so to do; notwithstanding the expressed provision herein set forth that this agreement shall continue in force so long as the Terminal is occupant of the said premises designated in this agreement; provided, however, that should the Terminal in any respect violate or fail to comply with any of the conditions or covenants herein contained, then this agreement shall at the option of the Carriers, or either of the Carriers as to such Carrier, on thirty (30) days' written notice to the Terminal, cease and determine and become absolutely void as to the Carriers or such Carrier as shall give such notice; provided, further, that this agreement is subject to different termination, revision or annulment as may be necessary to comply with any law, order or decision of authorities having competent jurisdiction which may now be in effect or which may be hereafter enacted affecting the service hereunder.

(30) If any disputed question shall arise between the parties concerning the construction or performance of this agreement, such question shall be submitted to the arbitration of three disinterested persons to be chosen, one by the Terminal, one by the Carriers, and one by the arbitrators so chosen. If either of said parties shall fail to name an arbitrator within twenty (20) days after written notice to it from the other party setting forth the question or questions at issue, the arbitrator named by the party

giving such notice shall name an arbitrator in behalf of the party so in default. If the arbitrators so chosen shall fail to select a third arbitrator within twenty (20) days after the selection of the second arbitrator as aforesaid, the third arbitrator may be appointed, upon twenty (20) days' written notice by either party to the other of its intention to make application therefor, by any Judge of the United States District court for the district in which the facilities herein described shall then be located. The arbitrators shall promptly hear and decide the question or questions submitted to them, as herein provided, giving each of said parties reasonable notice of the time and place of hearing. The arbitrators shall make their award in writing, serving a copy upon each of said parties. The award of a majority of the arbitrators shall be final and binding upon the said parties. The expense of such arbitration shall be borne by the party against whom the decision of said arbitrators may be rendered, or, if a divided award be made, in the proportions fixed by the arbitrators.

(31) Where reference is made in this agreement to terminals owned by the Carriers in the City of Norfolk, Virginia, such reference shall be understood to include any terminal owned or operated by them at Pinners Point, Portsmouth, or Berkeley, Virginia.

(32) Subject to any right to cancel or terminate this contract, as provided herein, or given by law, the provisions of this contract, so far as they are applicable to the said Receivers of Seaboard Air Line Railway Company, shall be binding upon and shall inure to the benefit of the Receivers of Seaboard Air Line Railway Company (as Receivers, but not individually), and their successors, the Seaboard Air Line Railway Company and its successors, the railroad corporation which may, after the termination of the receivership of the Seaboard Air Line Railway Company, control and operate the line of railroad and appurtenant physical properties on or along which the property affected by this agreement is located, and/or to the business of which the subject matter of this agreement relates; and the successors of such railroad corporation.

(33) The said Receivers of Seaboard Air Line Railway Company further covenant unto and with the Terminal that they are authorized by order of the court appointing them as such Receivers to make and enter into this agreement and thereby to bind the estate in their trust.



IN WITNESS WHEREOF, the said parties hereto have hereunto affixed their respective seals, duly attested, the day and year first herein above written.

Signed, Seal and Delivered  
in the Presence of:

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DEFENDANTS' EXHIBIT No. 27

I.C.C. DOCKET No. 29117

WITNESS: W. W. WOLFORD

### CHRONOLOGICAL HISTORY OF THE ARMY BASE, NORFOLK, VIRGINIA

The then Army Supply Base (now Army Base), Norfolk, Va., with its piers and warehouse facilities, was built by the Federal Government during World War I, and used exclusively by the U. S. Army until November 20, 1919. It neither sought nor received any wharfage and handling allowance from the railroads. It was leased to the City of Norfolk under an agreement drawn (November 20, 1919) between the War Department and the City of Norfolk, Virginia. By this agreement the City of Norfolk was granted the use of Pier 2 at the Army Supply Base and space equivalent to two warehouses which were made available for commercial business, compensation for which use was to be determined and fixed upon a tonnage or per package basis, in accordance with the schedule annexed to said agreement. The City, through its Port Director, then undertook to make arrangements with the railroads, through contract, to provide for that part of the Army Supply Base under its control as a joint terminal where export and import cargoes could be assembled and distributed without involving the expense of lighterage or car detention, etc. Before any agreement was reached or formal contract executed making the City of Norfolk a public terminal operator and the agent of the rail lines serving Norfolk, a new agreement was entered into between the City of Norfolk and the Secretary of War, cancelling the former agreement dated November 20, 1919.

This new agreement was entered into on the 10th day of August, 1920, by authority of the Secretary of War, by and between P. W. Guiney, Colonel, Infantry, for and on behalf of the U. S. of America and the City of Norfolk, State of Virginia, by C. E. Ashburner, City Manager. The August 10, 1920, agreement granted the city the right to use, employ and occupy such portions of Pier Number Two and

said warehouse space or spaces in the Army Supply Base as may be designated from time to time by the Government or its authorized representative in charge of the piers, further providing that "Pier Number One may be used on the same terms and conditions as Pier Number Two, when space is available on Pier Number One". The Government further granted the City the right to use such portion or portions of the railroad tracks at the Army Supply Base as may be designated by its authorized representative. Article 3 provided the city would make payment to the Government for use of said property, to be determined and  
 479 fixed upon a tonnage or per package basis, in accordance with wharfage, storage and other rates as set forth in Schedule "A" made a part of the agreement. In the same article there is also provided, "the City will make payment to the Government of 25 cents per car for each loaded car billed and moved to or from the Army Supply Base", and "the City will handle cars and freight for the Government at the same rate as charged others for similar service". Schedule "A" provided for wharfage charge on export and import traffic handled direct on the piers of one cent per hundred pounds and storage charge for the first 10 days or fraction after the expiration of free time of one cent per hundred pounds, and for each succeeding 10 days or fraction, one-half cent per hundred pounds. Schedule "A" also provided "the following rates will be paid to the War Department by the City of Norfolk, Virginia, for articles handled over piers:

"Wharfage—Fifty per cent (50%) of rate charged by the City of Norfolk, Virginia"

Storage—Sixty per cent (60%) of rate charged by the City of Norfolk, Virginia"

with other similar charge for storage in warehouses.

The City of Norfolk filed a tariff, Agent A. G. King's I.C.C. No. 1, naming the charges for terminal services to be performed by it at Norfolk, Virginia, but this tariff was protested by several public warehousemen and wharfingers at Norfolk and suspended under I&S Docket 1230 by the Interstate Commerce Commission. In the meantime, on September 21, 1920, the railroads entered into a contract with the City of Norfolk to make available for public use, the facilities at the Army Supply Base, Norfolk, Virginia, known as the municipal piers, on basis of the same rules, regulations, wharfage and handling charges, as published by the carriers over their own terminals. The contract,

among other things, provides in Article (18) "that the carriers and the Belt Line will handle traffic for the U. S. Government at the Army Supply Base at the same rates as charged others for similar service at the Army Supply Base".

It will be seen that while the railroads entered into a contract with the City of Norfolk as the operators of a public terminal facility, and made the usual wharfage and handling allowance to them where rates had shipside application, the Army did not receive or benefit from this allowance. The Army received, as consideration for the lease of its property, a percentage of the charges on all traffic handled by the City over the leased facilities, including commercial traffic as well as Army traffic, and including all traffic handled, whether on shipside rates involving an allowance from the railroads to the City, or whether on non-shipside rates involving no allowance, but where the consignee, including the Army as consignee, paid its own wharfage and handling.

480 On December 13, 1920, the Interstate Commerce Commission rendered its decision in I&S Docket No. 1230—Wharfage, Handling and Storage Charges at Municipal Terminal, Norfolk, Virginia, in which it found that respondent—City of Norfolk, Virginia, is not a common carrier subject to the Interstate Commerce Act and, therefore, ordered the suspended schedules (Agent A. G. King's I.C.C. No. 1) stricken from their files. The Commission held "if the line-haul carriers or the Belt Line desire to use the facilities of respondent in Interstate or foreign commerce, its storage or other terminal charges should be published by them as provided in Section 6 of the Interstate Commerce Act, and should properly be established in the manner originally suggested by respondent".

Under this decision, as applied to the present Army Base terminal, privately operated and handling only its own traffic, the line-haul railroads could not incorporate this private facility into and make it a part of their interstate common carrier operation; first, because it is a private facility and would not be in position to handle any of the public's traffic that publication of charges over the facility by the line-haul carrier would require, and second, because the Army operates a private railroad intervening between the common carrier railroads and the terminal facility, and the railroads cannot incorporate, through the publication of tariff charges, a terminal facility into their interstate common carrier operation that cannot be reached except over a privately operated railroad.



The September 21, 1920 contract with the City of Norfolk remained in effect until the terminal was taken over by the Norfolk Tidewater Terminal.

On or about September 1, 1925, the Norfolk Tidewater Terminal took over the operation of the Army Supply Base and leased the terminal from the U. S. Shipping Board, at the same time making a contract agreement with the City of Norfolk to operate the facilities. Norfolk Tidewater Terminals, Inc., then approached the rail carriers for the execution of a contract to make them agents of the rail lines. However, such an agreement was not executed until June 7, 1927, when a joint agreement was made between Norfolk Tidewater Terminals, Inc., and the ACL, Norfolk Southern, SAL and Southern Railway. Later on this contract was cancelled and a new contract executed and made effective March 1, 1937. This contract provides in part "that the provision in regard to absorbing the charges shall not apply to traffic that is the property of the terminal". This contract remained in effect until a new agreement was made with the Transport, Trading & Terminal Corporation, who took over the Army Supply Base operations as of midnight June 30, 1940, after leasing same from the U. S. Maritime Commission. Article 2 of this agreement made effective July 1, 1940, provided "that the provision in regard to absorbing the charges shall not apply to traffic that is the property of the Terminal".

481 On June 15, 1942, the U. S. Government cancelled the contract between it and Transport, Trading & Terminal Corporation (see War Department letter of December 1, attached) and took over the use and operation of the Army Base. The War Department letter of December 1, 1942, from which this information is taken, names both Piers 1 and 2 and does not mention the Navy Department as having taken over and any portion of the Base but it is a fact that when the Transport, Trading & Terminal Corporation moved out, the Navy moved into and has since continued to occupy and operate the north half of the Base, including Pier 2, Warehouses 6, 7 and 8, and a substantial part of the ground area. A fence some eight feet high was built separating this part from the remainder occupied by the Army.

The Transport, Trading & Terminal Corporation continued to function at the Base for about thirty days, disposing of commercial freight on hand at the time the Government took over.

There is attached letter dated December 1, 1942 from the War Department to Mr. A. F. Cleveland, Vice President, Association of American Railroads, advising that the War Department is now operating Army Base Piers 1 and 2, not mentioning the Navy Department, "for its own exclusive use" and asking the railroads to make the same allowance to it for handling Government traffic over the pier as they formerly made to the Transport, Trading & Terminal Corporation for handling commercial traffic for the public over the piers. Particular attention is directed to the War Department statement that the War Department is operating the terminal "for its own exclusive use" meaning it will not accept or handle commercial traffic for the public. Attention is also directed to the fact that the railroads did not make any allowance to the Transport, Trading & Terminal Corporation for handling its own traffic, so the failure to make an allowance to the War Department was consistent with the prior arrangement with that Terminal Company.

Mr. A. F. Cleveland, in his reply of February 16, 1943, advised the War Department that it would not be proper to make the allowance, this terminal no longer being a public terminal but the private facility of a private shipper, no different from the private facility of many other industries, and of the Navy Department.

The next communication from the War Department is a letter from Brigadier General Kilpatrick dated May 22, 1943, to the General Freight Agents of the line-haul carriers serving Norfolk. Copy of this letter is attached. This letter requested the railroads to "meet their legal obligation by performing unloading service, when line-haul rates cover such service". Aside from the fact that the line-haul railroads recognize no obligation to perform the unloading service on a shipper's own traffic handled  
 482 over his private dock, the letter does not undertake to explain how the railroads could hold themselves in readiness to meet the alleged obligation when the freight is taken out of their possession and they are not permitted to know what particular carloads of traffic are to be exported rather than stored on premises, used locally, or forwarded as "overseas freight" instead of export freight. Also assuming certain carloads are earmarked for actual export, which earmarkings the railroads could not know about, whether the regular business hours during which the railroad would be prepared to perform the unloading would be acceptable to the Army.

The railroads replied individually to this letter, each advising that it has no obligation to do this unloading. Copies of these letters are attached.

The final letter from the War Department was Brigadier General Kilpatrick's letter of May 1, 1943, copy attached, addressed to General Freight Agent Randolph B. Cooke of the Pennsylvania Railroad at Norfolk. Copy of that letter is attached. It requests the Pennsylvania Railroad to perform the terminal service on a specific car.

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DEFENDANTS' EXHIBIT No. 28

I.C.C. DOCKET No. 29117

WITNESS: W. W. WOLFORD

ARRANGEMENTS BETWEEN THE SOUTHERN TERRITORY LINES AND PUBLIC RAIL-WATER TERMINALS IN THE HAMPTON ROADS AREA; AND PRACTICES OF THE SOUTHERN TERRITORY LINES IN REGARD TO ALL PRIVATE INDUSTRIES HAVING WATERFRONT TERMINALS ENGAGED IN HANDLING THEIR OWN TRAFFIC

Paragraph 11 of the complaint alleges discrimination in the treatment accorded other docks at Norfolk as contrasted with treatment accorded complainant. The following describes the arrangements with all terminals in the area.

LAMBERTS POINT DOCKS, INC.

This terminal is engaged *solely* in handling *commercial traffic for the public* interchanged between rail and water carriers, it is served by the N&W Railway and is located near N&W terminals at the spot marked Lamberts Point on the map, Exhibit No. 23. The railroads have a standard contract with it covering its relations with them in the performance of the terminal services. The railroad's tracks serve the terminal directly, rather than through an intervening private railroad facility. Although this public terminal does not have any traffic of its own, if it should have, it would not receive any allowance for unloading and wharfage even though such traffic moved on export rates with shipside application. The standard contract the railroads have with it so provides.

NORFOLK TIDEWATER TERMINAL

This company operated the Army Base Terminals from Sept. 1 1925, to June 30, 1940. After vacating those terminals, it soon thereafter leased Southern Railway Pier No. 4, and later also leased Seaboard Railway Pier No. 7.



both on the west side of the Elizabeth River. This terminal is engaged in handling *commercial traffic for the public*, and has not handled any of its own traffic. If it did handle any of its own traffic, the railroads would not make any allowance to it on that traffic. The Southern Railway has a standard contract with it covering its relations with them in the performance of the terminal services. This contract contains the usual standard provision that no allowance will be made to the terminal on its own traffic. The Seaboard contract with the terminal is still in process of negotiation covering some details.

484

LINCOLN TIDEWATER TERMINALS, INC.

(for commercial traffic)

also known as

ARMY AIR FORCE—IN TRANSIT—DEPOT No. 12

(for Army Air Force traffic)

also known as

UNITED NATIONS DEPOT No. 9

(for lend-lease traffic which formerly moved)

also

HRPE—LINCOLN TIDEWATER TERMINALS—SEWALLS POINT

(for HRPE traffic)

The Lincoln Tidewater Terminals succeeded the Lamberts Point Docks—Sewalls Point Division.

The U. S. Air Corps took over the Sewalls Point, Va. terminals of the N&W Railway under lease on March 16, 1942, designating these piers as "U. S. Air Corps Defense Aid Depot No. 9," later known as "United Nations Depot No. 9" and presently known as "Army Air Force—In Transit—Depot No. 12". On or about the same time the U. S. Air Corps contracted with the Lincoln Tidewater Terminals to act as ocean terminal operators at this terminal for them. In addition to the U. S. Air Corps' own traffic consisting of airplanes, airplane engines, propellers and parts consigned to off-shore bases, the Air Corps also permitted export lend-lease materials to pass over this pier. The name of the pier for purpose of handling this lend-lease traffic over it was "United Nations Depot No. 9". The name of the lend-lease agency or organization handling this lend-lease material is not known.

In January, 1944, the organization handling the lend-lease materials became "deactivated".

Recently, whether before or after January, 1944, not being known, the army organization known as Hampton Roads Port of Embarkation (HRPE), which is the organization operating Army Base Pier 1, also began to move traffic (perhaps but not necessarily overflow from Army Base Pier 1) over this pier. They (HRPE) did not displace the Army Air Force but both thereafter used these piers jointly. HRPE also used the stevedoring and related services of the Lincoln Tidewater Terminals organization, possibly having entered into the same arrangements with the terminal organization as already existed and exist between the terminal organization and the Army Air Force. HRPE also (the same as at Army Base Pier 1) uses its own enlisted labor battalions and hires civilian laborers individually, as well as contracts with the stevedores, the latter to furnish their own laborers.

485 The Norfolk & Portsmouth Belt Line Railroad, the switching carrier for the line-haul railroads, names the Lincoln Tidewater Terminals, Inc., as one of the terminals to whom the allowance will be made on traffic moving on rates subject to shipside application. On March 18, 1942 the Lincoln Tidewater Terminals advised the Norfolk rail carriers that they had taken over operation of the Lamberts Point Docks, under contract with the U. S. Air Corps, and requested the immediate amendment in all switching and terminal absorption tariffs covering this property, listing same in the name of Lincoln Tidewater Terminals, Inc. On the assumption the Lincoln Tidewater Terminals were taking over the former public terminal operation of their predecessors as well as engaging in the handling of certain Government traffic and with a verbal agreement that the new terminal operators would execute a standard operating agreement the same as then in force with the Lamberts Point Docks, Inc., making them agents of the line-haul carriers, the railroads granted their request and effective on April 10, 1942 changed their tariffs substituting the name of the Lincoln Tidewater Terminals, Inc., for the Lamberts Point Docks, Inc. (Sewalls Point Division). This tariff change was accomplished in Supplement No. 22 to N.&P.B.L. R.R. I.C.C. No. 105. Shortly thereafter a standard operating agreement was drafted and presented to the Lincoln Tidewater Terminals for execution, but was returned by them in May 1942 with the statement that under their contract with the Government to operate the terminals on a flat fee basis (the Government paying all wages and cost of op-

erations, with the exception of the office force, stationery and office supplies) they could not furnish insurance or performance bond at the expense of the Lincoln Tidewater Terminals. In the light of these subsequent developments that the Lincoln Tidewater Terminals are merely an agent for the Government, handling only the Government's traffic, and would not be operating as a public terminal nor be handling commercial traffic except to an inconsequential degree if at all, the matter of executing an operation agreement with them making the terminal an agent of the rail carriers for such commercial traffic as they might handle was dropped.

The only known instance of commercial traffic for the public moving over the docks on a rate subject to shipside application and handled by the Lincoln Tidewater Terminals was some ore imported over the docks destined to Emco, Ala. handled by the railroads on a commercial (non-government) bill of lading as a commercial shipment to a non-government consignee. The railroad made the allowance on that. On all Government traffic handled by the Army Air Force and by HRPE over this dock, no allowance has been made. Neither one is seeking an allowance in this complaint.

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#### IMPERIAL TOBACCO COMPANY DOCKS

The Imperial Tobacco Company is located on the waterfront at Berkeley.

It has deepwater docks and as a part of its business it brings in by rail and exports its own tobacco over these dock facilities. It also handles tobacco and tobacco accessories for others over these docks.

As a public dock handling commercial traffic for others the railroads treat it the same as other public terminals. They have entered into a contract with it and make it the allowance on traffic moving on rates subject to shipside application.

As a private dock handling its own traffic, the railroads treat it the same as they do the Army Base, the Naval Base, the Army Air Force Lincoln Tidewater Terminal and the numerous other private industries handling their own traffic over their own docks—i. e. the railroads make no allowance on such traffic.

#### NAVAL OPERATING BASE

The Navy Department is engaged in handling Navy traffic through this terminal in the same way that HRPE is en-



gaged in handling Army traffic through the Army Base. No allowance has been sought and none is made.

**PRIVATE INDUSTRIES IN NORFOLK-PORTSMOUTH AREA HAVING  
DEEPWATER FACILITIES AND RAIL CONNECTIONS**

American Oil Company (Mexican Petroleum Corp.)  
 Armour Fertilizer Works  
 Co-operative Fertilizer Service  
 Chilean Nitrate Sales Corporation  
 Gulf Refining Company  
 Imperial Tobacco Company  
 Jones Cold Storage Company  
 Lone Star Cement Corporation  
 Pure Oil Company  
 Robertson Chemical Corporation  
 Royster, F. S., Company  
 Smith-Douglass Company  
 Standard Oil Company  
 Swift & Company (Fertilizers)  
 Texas Company  
 Virginia-Carolina Chemical Corporation  
 Weaver Fertilizer Company

These private industries are all engaged in handling their own traffic over their own docks in the same manner that the Army's traffic is moving over its Army Base pier. No allowance is made to any of them.

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I.C.C. DOCKET No. 29117

DEFENDANTS' EXHIBIT No. 33

WITNESS: THEOBALD

THIS AGREEMENT, made this 31st day of October, 1931, by and between THE IMPERIAL TOBACCO COMPANY (of Great Britain and Ireland), LIMITED, a corporation organized and existing under and by virtue of the laws of the United Kingdom of Great Britain and Ireland, and duly qualified to transact business in the State of Virginia, hereinafter referred to as the Imperial Company, party of the first part; and

ATLANTIC COAST LINE RAILROAD COMPANY, a corporation organized and existing under and by virtue of the laws of the State of Virginia, hereinafter referred to as the Carrier, party of the second part:

## WITNESSETH THAT

WHEREAS, the Imperial Company is operating piers and warehouses located on the Elizabeth River at Berkley (Norfolk), Virginia; and

WHEREAS, the parties to this agreement desire to cooperate with each other in order that the aforesaid facilities of the Imperial Company may be made available to the fullest extent for the development of waterborne traffic, may contribute to the upbuilding of the business of the respective companies parties to this agreement and to the business of the Port of Norfolk; and

WHEREAS, to this end the parties hereto desire to enter into an agreement with respect to the handling and storing of merchandise of all kinds at the said piers and warehouses of the Imperial Company when consigned to or in care of the said Imperial Company;

NOW, THEREFORE, for and in consideration of the premises and of the covenants and agreements on the part of each party hereto to be observed, kept and performed, it is hereby mutually covenanted, stipulated and agreed by and between the parties hereto as follows:

1. That as to export, import, intercoastal and coastwise freight traffic (other than traffic moving via regular coastwise lines on joint through rates), in carload lots, also in less than carload lots aggregating 10,000 pounds or more, the carrier shall and will take and deliver the same over its line at the same basis of rates as applied to and from its Norfolk station, as contained in Carrier's published tariffs, and in the same manner and with the same promptness that it delivers and receives like traffic at any other terminal point controlled by it in the City of Norfolk, provided the origin or destination and route of such traffic is such as will afford the Carrier a line-haul beyond the Norfolk switching district. Nothing in this paragraph shall be construed to require the absorption of any terminal charges contrary to the provisions of paragraph 2 hereof.

2. That on import, export, intercoastal and coastwise freight traffic (other than traffic moving via coastwise lines on joint through rates), in carload lots, also in less than carload lots aggregating 10,000 pounds or more, handled for account of the Carrier by the Imperial Company where the tariffs of the Carrier provide that wharfage and/or handling charges shall be absorbed in the freight rate to or from Norfolk, the Carrier will absorb wharfage and/or handling charges at the piers and warehouses of the Imperial Company in the same manner and to the same extent that it

absorbs such charges at its own terminals at Pinners Point; Provided, that no handling charge will be absorbed on freight in open top cars, grain in bulk or freight in tank cars; and provided that the provisions of this paragraph shall not apply to traffic that is the property of the Imperial Company.

3. That where the Carriers' tariffs do not provide that wharfage and/or handling charges shall be absorbed in the freight rate, the Carrier shall publish in its tariffs the same added wharfage and/or handling charges to apply on traffic moving over the piers and warehouses of the Imperial Company as are effective at the Carrier's own terminals at Pinners Point. Such added wharfage and/or handling charges shall accrue to the Imperial Company.

4. The Imperial Company agrees to make every reasonable effort to load and unload cars or lighters promptly and to reduce the delay to a minimum.

5. The Imperial Company shall provide the necessary organization and employees to perform the labor of loading and unloading cars or lighters and to check freight to or from its piers and warehouses.

6. The Imperial Company agrees to be responsible to the Carrier for collection of freight charges as per freight bills rendered by the Carrier and any other charges lawfully assessed against the property transported and to comply with the laws with regard to collection of such charges by common carriers and with lawful orders of Government authorities of competent jurisdiction affecting such collection by common carrier.

7. The charges collected by the Imperial Company and due to the Carrier shall be paid by the Imperial Company to the Carrier in accordance with the rules and regulations prescribed by proper officers of the Carrier.

PAGE 2

488 8. The Imperial Company agrees to be responsible to the Carrier for any improper delivery of goods entrusted to its possession under the terms of this contract.

9. That with respect to freight delivered to the Imperial Company by the Carrier the Imperial Company shall assume the duties and obligations imposed by law and/or rules of the American Railway Association, Division VII—Freight Claims (commonly known as the Freight Claim Association) upon a delivering carrier. It is understood that delivery shall have been made when cars, car floats or lighters have had their first placement at the wharf adja-



cent to the piers and/or warehouses of the said Imperial Company.

10. That with respect to freight to be delivered to the Carrier by the Imperial Company, the Imperial Company will be responsible until such freight is in proper shipping condition and is loaded into the cars or lighters and bill of lading and shipping order come into the possession of the Carrier. That in the adjustment of claims on such freight the Imperial Company will assume the duties and obligations imposed upon a forwarding carrier by law and/or rules of the American Railway Association, Division VII—Freight Claims (commonly known as the Freight Claim Association).

11. The Imperial Company will indemnify the Carrier and save it harmless to the extent of the common carrier or warehouseman's liability of the Carrier, as the case may be, in the event of any claims for loss or damage to freight in the Imperial Company's possession as per the preceding paragraphs hereof (numbers 9 and 10), including loss or damage by fire.

12. The Imperial Company will make no charge against the owners of freight or any other persons for the storage thereof or for other services rendered by the Imperial Company in connection therewith during the period of free time established by the duly published tariffs of the Carrier for whose account the freight is handled. It is understood that such free time shall be computed in accordance with the rules of the published tariff whether the traffic is held in cars or on lighters or on the premises of the Imperial Company.

13. That with respect to import, export, intercoastal and coastwise freight handled by the Imperial Company hereunder, the Imperial Company shall make same charge for storage, use of terminals or any other services in connection therewith and under same rules and regulations as are contemporaneously maintained by the Carrier for similar services at its own piers at Pinnars Point, except this is not intended to apply to freight that may be on long time storage.

14. The Imperial Company will make, execute and deliver to the Carrier, and at all times during the life of this agreement maintain in full force, a bond in such form and with such good and sufficient surety or sureties as may be approved by the Carrier, in the penal sum of Five Thousand Dollars (\$5,000.00), conditioned upon the faithful performance by the Imperial Company of each and every its covenants in this agreement contained. The Imperial Com-

pany will also, at its own cost and expense provide, and at all times during the life of this agreement keep in full force, fire insurance in sufficient amount to protect the full liability of the Carrier for goods, wares and merchandise while in the possession of the Imperial Company as defined in this agreement; policies to be written by approved insurance companies with loss payable clause reading as follows:

"Loss, if any, on property belonging to The Imperial Tobacco Company (of Great Britain and Ireland), Limited, payable to them."

"Loss, if any, on property held by the assured as agent of or for account of Atlantic Coast Line Railroad Company payable to The Imperial Tobacco Company (of Great Britain and Ireland), Limited, and/or Atlantic Coast Line Railroad Company, as respective interests may appear."

15. That the Imperial Company will not perform a common carrier service or make a charge therefor until such service and charge are covered by the Carrier's tariffs lawfully effective.

16. That wherever the service performed and charge assessed by the Imperial Company under this agreement are covered or are to be covered by tariffs, classifications, rules and regulations of the Carrier, it is understood that the Imperial Company is to act as agent of the Carrier and to strictly comply with its publications and the laws and/or lawful orders of Government authorities of competent jurisdiction, and that the Imperial Company will indemnify the carrier for all damage or expense it may incur by reason of the Imperial Company's violation of this understanding.

17. The Imperial Company will keep the said warehouses and premises in good order and repair and properly equipped for the prompt and effective handling of the traffic delivered to and received from it by the Carrier.

18. It is further agreed that no assignments of this agreement shall be valid without the consent of the Carrier, and that this shall apply as well to involuntary assignments, and that upon the happening of any legal proceedings the effect of which shall be to divest the title or possession of the said Imperial Company this agreement shall, at the option of the Carrier, cease and determine.

489 19. That this agreement shall take effect as of the date of these presents, and shall continue in effect until such time as either party hereto shall terminate the

same by serving upon the other ninety (90) days' notice in writing, of the election to do; PROVIDED, however, that the Carrier shall have the right, and the same is hereby reserved, to terminate the same forthwith upon the violation by the Imperial Company of any of its covenants in this agreement contained.

20. In case of any difference or dispute arising under this agreement with reference to its proper interpretation, the parties hereto agree to submit the same to two arbitrators, one of whom shall be appointed by the Carrier and the other by the Imperial Company, and if these arbitrators cannot agree, they shall select a third disinterested and competent party, and their decision or that of a majority of them shall be final and conclusive between the parties hereto. And, in case either of the said parties shall fail to appoint an arbitrator, as aforesaid, for the period of thirty (30) days after written notice given by the other party to make such appointment, then and in that event, the arbitrator appointed by the party not in default shall appoint an arbitrator for the defaulting party, and the said two arbitrators shall select a third arbitrator, and the three so chosen shall hear and decide such differences, and their decisions or that of a majority of them shall be final and conclusive upon the parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their respective officers thereunto duly authorized, the day and year first above written.

THE IMPERIAL TOBACCO COMPANY (of  
Great Britain and Ireland), LIMITED,  
By (S) L. H. REED,  
*Resident Director.*

In presence of:

(S) W. A. LARK,

(S) J. M. JONES,

As to Imperial Company.

ATLANTIC COAST LINE RAILROAD COMPANY,  
By: (S) C. McD. DAVIS,  
*Vice-President.*

In presence of:

(S) J. E. LOUGHLIN,

(S) JAMES B. SHARPTON,

As to Carrier.



## 490 Interstate Commerce Commission

No. 29117

UNITED STATES OF AMERICA

v.

ABERDEEN & ROCKFISH RAILROAD COMPANY, *et al.*

Submitted

Decided

Refusal of defendants to make the Army an allowance for wharfage and handling costs incident to shipside receipt and delivery of its export, import, coastwise and intercoastal freight at Army Base Piers 1 and 2, Norfolk, Va., or to state wharfage and handling charges at Norfolk separate from the rates on said tariff found not to result in rates that are inapplicable, unreasonable, unjustly discriminatory, unduly prejudicial or otherwise unlawful. Complaint dismissed.

*Francis M. Shea, Donald B. MacGuineas, Major Edward H. Cox, and First Lieutenant E. F. Huber* for complainant.

*Windsor F. Cousins, Anthony P. Donadio, Harold H. McLean, Charles P. Reynolds, A. J. Dixon, John C. Donnelly, D. Lynch Younger, Lawrence Chaffee, R. D. Brooks, and C. H. Ware* for defendants.

*Powell G. O'Neil* for State Corporation Commission of Virginia, intervenor.

*H. J. Wagner, Charles R. Seal, Samuel H. Williams, Frederick E. Brown, Wilbur LaRoe, Jr., Arthur L. Winn, Jr., F. J. D. MacKay, H. V. C. Wade, and Edward K. Laur* for other interveners.

## REPORT PROPOSED BY WM. A. DISQUE, EXAMINER

By complaint filed April 15, 1944, complainant, hereinafter called the Army, alleges that defendants' refusal to make it an allowance for wharfage and handling costs incident to shipside receipt and delivery of its export, import, coastwise and intercoastal freight at Army Base Piers 1 and 2, Norfolk, Va., resulted and results in rates<sup>1</sup> that are inapplicable, unreasonable, unjustly discriminatory, unduly prejudicial and otherwise violative of the Interstate

<sup>1</sup> Rates and charges will be stated herein in amounts per 100 pounds.

Commerce Act. The Commission is asked to require defendants for the future to pay the Army an allowance for wharfage and handling costs or publish wharfage and handling charges separately from, and for application in connection with, rates to and from the Norfolk piers representing reductions from the present rates in the amount of such charges, and award reparation on all past shipments handled by the Army over the piers. The proceeding can concern only tariff rates. Lower rates resulting from land grant deductions and rates afforded under section 22 of the act are not within the jurisdiction of this Commission.

DOCKET No. 29117—SHEET 2

491. The State Corporation Commission of Virginia; State Port Authority of Virginia; Norfolk Port-Traffic Commission; Richmond Chamber of Commerce; Baltimore Association of Commerce; Chamber of Commerce and Board of Trade of Philadelphia; and Port of New York Authority intervened. They oppose the publication of wharfage and handling charges separate from the rates, but otherwise are neutral.

There have long been several piers at Norfolk which have been used for export and import traffic moved to and from that port by rail. Two of them, Army Base Piers 1 and 2, jutting out into Hampton Roads just north of Lafayette River, were built by the Army, having been completed shortly after the last war and leased to private interests for commercial peace time operation as public terminal facilities of the railroads. About two years ago, with the rapid building up of our overseas forces, the Army found it necessary to retake these two piers and operate them for the movement of tremendous and unprecedented quantities of military traffic, almost entirely outbound. Army operation began June 15, 1942, and still continues. Prior to that date the 2 piers had been operated by the Transport, Trading and Terminal Corporation as an agent or servant of defendants. Large adjacent railroad storage yards can accommodate perhaps 500 cars. They are served by the rails and power of the Norfolk and Portsmouth Belt Line Railroad Company and The Virginian Railway Company. These carriers deliver the cars containing outbound traffic and pick up the cars containing inbound traffic in the yards. The Army takes control of movements between the yards and the pier locations and there operates several locomotives of its own with its own crews. In addition the Belt Line contributes a locomotive and 2 crews, switch-

ing and reswitching cars at the direction of the Army and sometimes placing a car more than once. The loading and unloading of the cars, including the movement of the freight between the cars and the ships by lift trucks, trailer trucks and other facilities, all of which work is hereinafter called handling, is performed by the Army, generally in accordance with detailed plans and specifications prepared weeks in advance for each ship, but subject to change in emergencies. This work could not be performed by defendants according to their convenience. The freight has to be handled according to priorities and the various unusual and changing conditions that face the Army. For instance, ships that have been partially loaded or unloaded sometimes have to be temporarily moved away from the piers and out into the stream to make room for emergency loading of other ships. Some cars may be unloaded immediately upon placement, while others may be held a short time or the freight therein unloaded and stored on the piers or in warehouses before being put aboard ship. Frequently the Army has had to load ships day and night to meet a convoy deadline hour, based on calls from overseas for immediate supplies of munitions. All activities on the piers must be supervised and coordinated by one governing head. Ever since the piers were taken over by the Army it has used as its own and at its own expense the personnel of the previous pier operator, which did the handling; that is, the same men that did the work for the corporation mentioned are doing it for the Army, except that as labor shortages have developed the Army has assigned prisoners of war permanently to this work and has often used soldiers en route and sometimes stevedores to supplement regular civilian labor. At the time of the hearing the civilian personnel on the piers was only about half of the

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492 total employed. There is testimony from the Army to the effect that if defendants had the manpower it would be willing to have them do the work and let them have its civilian force, subject to the screening off of the railroad employes and the observance of ordinary rules respecting such matters as security, safety, fire and cleanliness. However, the Army recognizes that the civilian force is entirely inadequate and that the railroads could not get the additional manpower needed to handle peak loads. Troops would have to be used by the Army just as they are under the present arrangement. Obviously any-



thing but Army operation is out of the question. Although the Army did not want defendants' men on the piers and knew that they could not perform the handling services according to the requirements of the situation, it nevertheless in May 1943, solely as a gesture to afford a basis for a contemplated formal complaint, made a written demand upon defendants to do this work or pay it an allowance in lieu thereof, which they refused. Incidentally, the Army allows the piers to be used for commercial bulk freight when that traffic can be handled without interfering with the movement of war traffic. Shippers make their own arrangements with the Army. About 700 carloads of commercial freight have been so handled. Among them were a number of carloads of outbound billets used as ballast and there was also some inbound ore. In at least one instance the Army unloaded the billets from the cars and put them aboard ship without charge, expecting reparation as a result of this proceeding.

By a special tariff provision defendants' export, import, coastwise and intercoastal rates to and from Norfolk are made applicable to and from the Army base piers, although the Army's traffic is not export, import, coastwise or intercoastal in the usual sense, for it passes into the possession of the owner at the piers before being re-forwarded. As applicable to and from the public commercial piers the rates of The Pennsylvania Railroad Company, the Norfolk and Western Railway Company, and the Virginian, but not those of The Chesapeake and Ohio Railway Company or the southern lines,<sup>2</sup> generally include wharfage, that is, rent for the use of the piers, which are not owned by defendants but provided by them under contracts with the pier operators. Subject to a few exceptions, principally as to short-haul traffic, lumber, bulky articles and freight in open cars, these rates also include the handling of the freight for defendants on the public commercial piers by the pier operators, but not by the owners of the property transported. It is not the practice or legal duty of railroads to perform handling services on carload freight, except in unusual circumstances, as in the case of livestock, or freight that is to be transhipped by the railroads or their agents or servants. On traffic not here involved, where wharfage and handling are not included

<sup>2</sup> The rates of the southern lines generally include wharfage and handling only where the Baltimore basis applies and where competition requires it; for instance, from points in central territory.

in the rates, published charges therefor are added, viz: 1 cent for wharfage and 3 cents for handling. Defendants provide wharfage and handling on the traffic here considered because it is in their custody for further movement and the shipper is not present to take possession of it and handle it. Shippers could not handle their freight

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493 — without interfering with defendants' operations on the piers. The amounts paid by defendants to the operators of the piers and absorbed by defendants out of the rates are the same as the published charges. The same arrangements applied at the Army base piers when they were operated as public commercial piers and similar arrangements as to handling, but not wharfage, are in effect at the other north Atlantic ports where the services are performed on public commercial piers by the railroads or their agents or servants, not owners of the property transported, but, since the Army took over the operation of its Norfolk piers, thus furnishing its own wharfage and doing its own handling, there have been no arrangements there for wharfage or handling by or for defendants. Some of the tariffs continue to refer to wharfage and handling at the piers of the Transport, Trading & Terminal Corporation at Norfolk until after the Army took over, but, of course, no such facilities or services could be provided by defendants and the uncanceled tariff provisions therefor were obviously a nullity. The main fact here is that the rates once contemplated wharfage and handling at what are now the Army base piers and still do at the public commercial piers, but defendants are relieved of furnishing wharfage and handling at the Army base piers. In other words, under the present rates as applied to the Army base piers the Army, at its own expense, provides the facilities and performs all of the handling which, by the application of the rate, it pays defendants to do, while shippers who send their traffic over the public commercial piers have facilities furnished and handling done for them without extra cost. The transportation to and from the piers is the same in both instances. The Army asks an allowance of 4 cents, the total of the wharfage and handling charges, or that the wharfage and handling charges at the Norfolk piers be published separately from the rates. As ground for its prayers it contends that the rates were and are relatively unreasonable; that it has been and is being subjected to unjust dis-

crimination; and that defendants have been and are following an unjust and unlawful practice in not providing, or paying for, the wharfage and handling. The past shipments involved moved on Government bills of lading, commercial bills of lading and commercial bills of lading converted into Government bills of lading. The Army paid the freight charges on the shipments covered by the Government bills of lading and commercial bills of lading converted into Government bills of lading.

The Army has leased a pier of the Norfolk & Western at Sewall Point, immediately north of the Army base piers and known as the United Nations Depot. It is used for Lend-Lease traffic and as an air corps "in-transit" depot. There the Army has hired the Lincoln Tidewater Terminals, Incorporated, to do the handling on a cost plus basis. Under certain contracts defendants pay this pier operator, except on Army traffic, a wharfage and handling charge of about 4 cents and the payments are turned over to the Army as the Army pays the pier operator for the facilities and the handling.

At Newport News, Va., across Hampton Roads from Norfolk, where the Army has taken over the piers of The Chesapeake and Ohio Railway Company, the Army gets an allowance of 50 cents per ton for handling and is charged nothing for the use of the piers. At Baltimore, Md.,

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494 the carriers handle the Army's carload freight and pay an allowance on less than carload freight. They pay handling allowances to the Army at Philadelphia, Pa., New York, N. Y., and Boston, Mass. The allowances here mentioned are made under section 22 of the act.

Defendants' evidence is to the effect that the rates in question to and from Norfolk are under a reasonable maximum level and that a 4-cent allowance would put them that much farther below the upper limit of reasonableness. While the rates mentioned include wharfage and handling, nothing was ever consciously included in them to cover the cost of these items. Stated otherwise, defendants have never particularly considered wharfage and handling in making the rates. They have always left the matter of charging or not charging for them to the railroads directly serving the port. None of the rates involved exceed the domestic rates. Practically all of them are lower. They are generally the same as the rates to and from Baltimore.



although movement to and from Norfolk generally entails longer hauls. For instance, from 106 important points in central territory the average distances are 838 miles to Norfolk and 690 miles to Baltimore. On class-rate traffic the rates involved to and from Norfolk are over 9 percent lower than the corresponding prescribed domestic rates.

The Army cites *Wight v. United States*, 167 U. S. 512, wherein unjust discrimination was found to exist because one shipper got a lower rate than another for the same transportation, although from the standpoint of competition there were good business reasons for the difference. It further cites *Borden's Farm Products Co. v. New York, N. H. & H. R. Co.*, 92 I. C. C. 270; 102 I. C. C. 497; and 147 I. C. C. 493, where the shipper of some perishable freight did necessary icing because the carriers, having no icing facilities, had failed to do it, although the rates included it; the Commission found that the carriers had followed an unreasonable and unlawful practice and that the shipper was accordingly entitled to reparation representing the reasonable cost of the icing. Also cited by the Army are: *Interstate Commerce Commission v. Diefenbaugh*, 222 U. S. 42; *Union Pac. R. Co. v. Updike Grain Co.*, 222 U. S. 215; *United States v. Baltimore & O. R. Co.*, 231 U. S. 274; *General American Tank Car Corp. v. El Dorado Terminal Co.*, 308 U. S. 422; *Colorado & Utah Coal Co. v. Denver & S. L. R. Co.*, 85 I. C. C. 545; *S. S. Pierce Co. v. Boston & A. R.*, 186 I. C. C. 583; *Elimination of New York, N. H. & H. R. Pier Stations*, 255 I. C. C. 305. None of the decisions affords the Army any support, as is evident from an examination of the facts and issues.

It is not the fault of defendants that the Army does not get as much service at Norfolk as other shippers. There is no indication that defendants have fallen short of their duty to provide all reasonable pier facilities, even assuming that they were legally bound to do so, which they deny, citing section 6(11) of the act and *Wharfage Charges at Atlantic and Gulf Ports*, 157 I. C. C. 663; 694. Special facilities for war are for the nation to provide. The proceeding did not arise out of any foreseeable circumstances for which defendants are responsible, but grew out of the unusual necessities of an emergency. The Army has not been hired by defendants to provide wharves or perform the handling service. It can not require them to hire

495 it. *Atchison, T. & S. F. Ry. Co. v. United States*, 232 U. S. 199; 214. The volunteer gets no pay. The Army could have had the traffic wharved and handled at defendants' expense if it had used defendants' piers and been willing to accept transportation such as defendants would have been able to provide. Railroads have the right to limit their terminal services to particular piers, if there is no unjust discrimination or undue prejudice. *McCormick Warehouse Co. v. Pennsylvania R. Co.*, 191 I. C. C. 727. They can not be required to operate on private property. *Winnsboro Granite Corp. v. Southern Ry. Co.*, 176 I. C. C. 481. The wharfage and handling at defendants' public commercial piers are plainly transportation provided by defendants for the shipper. Providing a wharf and handling the freight at the Army piers are plainly not transportation, but merely facilities provided and work done by a shipper for himself on his own property at his own convenience before and after the transportation is performed. Defendants therefore may not be required to provide a wharf or handle the freight on the Army piers and not being required to do so, are not bound to pay an allowance in lieu thereof. *Propriety of Operating Practices—Terminal Services*, 209 I. C. C. 11; 20; and *Ford Motor Co. Terminal Allowance*, 209 I. C. C. 77. The facts in the instant proceeding are very similar to those in *Weyerhaeuser Timber Co. v. Pennsylvania R. Co.*, 229 I. C. C. 463. There the refusal of the railroads to handle freight between cars and ships at Port Newark, N. J. on the shipper's own pier, while they performed such service on nearby public commercial piers on the same kind of traffic moving at the same rates, was found not unreasonable, unjustly discriminatory or unduly prejudicial. See also *Norfolk Port Comm. v. Chesapeake & O. Ry. Co.*, 159 I. C. C. 169, in principle to substantially the same effect.

The foregoing discussion disposes of the form of relief first stated and leaves for consideration the alternative question of whether 4 cents should be deducted from the rates involved to represent the wharfage and handling costs and published as separate charges with the rates reduced accordingly. Under such an arrangement the commercial shipper would pay the reduced rates plus the separate charges. So far as the total amounts paid by him are concerned, the situation would not be changed. The Army, however, would pay the reduced rates without the separate charges and the effect would be the same as an allowance.

The Commission can require rates and charges to be published in this manner where the facts warrant. Section 6(1) of the act provides in part as follows:

The schedules printed as aforesaid by any such common carrier shall plainly state the places between which property and passengers will be carried, and shall contain the classification of freight in force, and shall also state separately all terminal charges, storage charges, icing charges, and all other charges which the Commission may require, all privileges or facilities granted or allowed and any rules or regulations which in any wise change, affect, or determine any part or the aggregate of such aforesaid rates, fares and charges, or the value of the service rendered to the passenger, shipper, or consignee.

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496 In *Iron Ore Rates Cases*, 41 I. C. C. 181; 203, and 44 I. C. C. 368; 371, the Commission dealt with rates on ex-lake iron ore from the lower Lake Erie ports, and after considering the intent of the above-quoted provision and taking into account the practical considerations involved, required the carriers to state separately from these rates the charges for terminal services performed by them at the lake docks. In *Maritime Assn. Boston Chamber of Commerce v. Ann Arbor R. Co.*, 126 I. C. C. 199, it considered the rates on ex-lake grain and grain products from Buffalo, N. Y., to New York and Boston for ex-port and said, in passing, at page 213:

It is quite impossible upon this record to compare with any accuracy the terminal services performed at the ports upon this ex-lake grain after the cars are spotted at the water-front elevator, of the respective costs and special charges for such services. In our opinion, however, the evidence upon this subject indicates the desirability of confining the line-haul rates strictly to the service ending with the spotting of the cars, and requiring all further terminal service to be covered by a special charge or charges. Such a plan would preserve to each port such advantages as inhere in facilities for the convenient and economical loading of vessels, and would also facilitate such comparison of special terminal services and charges therefor as may be deemed advisable in the future. The situation is not unlike that presented in *Iron Ore Rate Cases*, 41



I. C. C. 181, where a similar separation of charges was required for somewhat analogous reasons.

In *Carolina Shippers' Assn. v. Atlantic Coast Line R. Co.*, 177 I. C. C. 161, in dealing with ex-ship rates of bananas from Charleston, S. C., the Commission incidentally expressed the view that separation of wharfage and handling charges from rates was preferable to the publication of rates from shipside. However, in *Lighterage Cases*, 203 I. C. C. 481; and *State of New Jersey v. Baltimore & O. R. Co.*, 245 I. C. C. 581, it refused to require terminal charges at Baltimore and New York to be separated from the rates. In *Wharfage Charges at Atlantic and Gulf Ports*, *supra*, 678, 692; after extensive investigation and consideration of various facts and contentions, it refused to require port terminal charges at Norfolk and the other ports there involved to be separated from the rates, notwithstanding the opposition of the United States Shipping Board and almost all of the port interests, except those of New York. The north Atlantic port interests interveners herein now reverse the position they there took, and with the New York interests and defendants, urge that the decision last cited was sound and should be followed here. They fear that if wharfage and handling charges at Norfolk are published separately from the rates, the same thing will happen elsewhere along the Atlantic coast and disrupt long-standing rate relations among the various competing ports and change the flow of traffic to the detriment of one or the other. In other words, they are interested in continuing single-factor rates to each port which include all services, to preserve the port differential relationships. They have the right view.

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497. Questions may arise as to whether rates not including wharfage and handling should be prescribed for application solely to and from the Army piers 4 cents lower than the rates that include wharfage and handling that apply to the other Norfolk piers. It is sufficient to say that there is no showing that such rates would be reasonable maxima.

Under section 22 of the act defendants could either make the Army an allowance or accord it rates to and from its piers lower than those to and from the other Norfolk piers. It is not clear how they would thus bring on valid claims from private shippers for like treatment, as they contend they would, for allowances to private shippers for services

that are not transportation can not lawfully be demanded or made. *Propriety of Operating Practices—Terminal Services*, *supra*, 29, 30, and *Merchant's Warehouse Co. v. United States*, 283 U. S. 501; and special concessions accorded the Government are no basis for reasonable rates for shippers in general. Defendants' refusal has the sanction of law and there are no good grounds for affirmative action by this Commission.

The Commission should find that defendants' refusal to make the Army an allowance or to state wharfage and handling charges at Norfolk separately from their rates does not result in rates that are inapplicable, unreasonable, unjustly discriminatory or unduly prejudicial.

The complaint should be dismissed.

499 Before the Interstate Commerce Commission

Docket No. 29117

UNITED STATES OF AMERICA

ABERDEEN AND ROCKFISH, ET AL.

*Reporter's Transcript of Oral Argument*

Hearing Room "B", I. C. C. Building, Washington, D. C.

Thursday, April 5, 1945

The above entitled matter came on for oral argument before the Commission (Division No. 2) at 10 o'clock a. m.

Present: Commrs. Rogers, (Presiding) Splawn and Barnard.

#### APPEARANCES

Donald B. MacGuineas, Room 3640, Department of Justice, Washington, D. C., appearing for Complainant.

Edward M. Cox, Major, J. A. G. D., Room 3723 Munitions Building, Washington 25, D. C., appearing for Secretary of War.

Winsor F. Cousins, 1740 Broad Street Station Bldg., Philadelphia 4, Pennsylvania, appearing for Defendants.

Charles P. Reynolds, 1110 Shoreham Building, Washington, D. C., appearing for Southern Carriers, Defendants.

Arthur L. Winn, Jr., Investment Building, Washington, D. C., appearing for Baltimore Asso. of Commerce, Chamber of Commerce and Board of Trade of Philadelphia, Norfolk Port-Traffic Commission, Port of New York Authority, Richmond Chamber of Commerce, and State Port Authority of Virginia.

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*Proceedings*

Chairman ROBERTS. Division 2 will hear argument now in 29117, United States versus Aberdeen and Rockfish Railroad Company.

Mr. MacGuineas?

*Argument of Donald B. MacGuineas*

MR. MACGUINEAS. May it please the Commission, this proceeding has been instituted by the United States to redress what we consider unjust and unfair practices and unjust discrimination by the carriers who serve the Port of Norfolk, Virginia in connection with the handling of traffic of the War Department which moves over what are termed the Army base piers at Norfolk.

The carriers, in their briefs, would make out that we are really complaining merely of an unreasonable rate as such, that however we quite misconceive the copy of our complaint as will be more apparent later.

The Army base piers at Norfolk consist of two, 1200 feet long, modern concrete covered piers, with all mechanical facilities for loading and unloading modern ocean-going cargo vessels. They have a capacity capable of loading and unloading eight large cargo ships simultaneously. They were constructed by the Government at the close of the first World War, and they began operation in 1920.

Beginning in 1920, and ever since, those piers have been a major facility at the Port of Norfolk for handling export and import traffic. The piers themselves, although owned by the Government, have always since 1920, been operated by so-called terminal operators. The railroads reach those piers over the lines of the Virginian and also over the lines of the Norfolk and Portsmouth Belt line which has connections with all of the other line haul carriers reaching that facility.

As I say, for a period ever since 1920, the carriers have used that facility as a major means of egress and ingress of traffic through the Port of Norfolk through the medium of these terminal operators, and the carriers, largely through the Belt line, have consistently brought their cars on to the piers and then the labor staff of the terminal operator would unload the cars from car to pier floor within a reasonable reach of the ship's berth.

That practice has been done pursuant to tariffs of the carriers which we contend in effect publish the shipside rates in the sense that by the tariff the carrier obligates it-



self to move the cars to the pier and to unload to Pier floor.

4 within distance of the ship's tackle.

In general those tariffs fall into two classifications. A statement

lesser number contain a direct shipment that the rate on a particular commodity shall be applicable to shipside. The more frequent practice, and the practice of the trunk-line carriers, I believe without exception, is to publish a  
503 separate line-haul tariff and then by an omnibus clause in that tariff to incorporate by reference a terminal tariff for the Port of Norfolk and the carriers' terminal tariff provides that it will absorb in the line-haul rate charges for wharfage and handling, and those charges are fixed generally as 1 cent per 100 pounds for wharfage, and 3 cents per 100 pounds for handling.

There are certain exceptions to the applicability of these tariffs. For example the Southern line tariffs do not generally contain shipside rates, rather it is by reference to specific commodities, and from a large number of points to or from southern territory and Norfolk a shipside rate is not applicable. Shipside rates are also provided inapplicable with respect to traffic moving in open-top cars, traffic moving in tank cars, and certain particularly heavy commodities such as lumber, but let me make it plain that we are complaining not at all with respect to any exceptions as to shipside rates which may be contained in the tariff. We accept those tariffs as they exist today.

It is our position that the carriers, however, are not living up to their obligation under the circumstances to which I now come.

As of July 15, 1942, the War Department established a so-called port of embarkation at Hampton Roads. It took  
504 possession from the terminal operator which was then the Transport Trading and Terminal Corporation,—it took possession of the Army base piers 1 and 2, together with a considerable number of other facilities at the Port of Hampton Roads. The exigencies of the war necessitated that. Of course all export traffic—that is to say, the movement of traffic by ship in furtherance of the war—had to be handled under the most rigid governmental controls for safety factors. The ships move out in convoy so that of course the Government had to schedule the loading and the movement of those ships.

Upon taking over the Army base piers, the Army took over bodily the entire staff of the Transport Trading and Terminal Corporation, with the exception of the sales force, but the labor force, the men who for more than twenty years, had been unloading these cars as employees of the Transport Trading and Terminal Corporation, to the pier floor, continued to do the same work subject, of course, to normal turn-over of labor.

The actual handling of the traffic from car door to pier floor is just the same under Army operation as it had been for the last twenty years. The tariffs remain the same.

Immediately upon the taking over of these piers, however, the carriers continued to collect the full line-haul rate which, as I stated, absorbs wharfage and handling to a total of 80 cents a ton.

Commr. SPLAWN. May I ask right there: that 80 cents a ton is a concession of the railroads in connection with the through movement of the traffic—rail and ocean—to yard. Is that calculated to cover the cost of this loading and handling or was it the result of any bargaining with any owners of piers or wharves, or was that just a concession in the rate—a voluntary—a division which was to encourage export and import traffic?

Mr. MACGUINEAS. Well, the evidence which the carriers introduced in this case was to the effect that the line-haul rates which were established to Norfolk and the other North Atlantic coast ports, were fixed without specifically taking into account the cost of the wharfage and handling, which was absorbed in the rate.

The Commission will recall that in 1931, in general the line-haul rates to these North Atlantic coast ports, were established to maintain certain differentials between the ports. The base rate was the line-haul rate to Baltimore. Norfolk was established at the same level as Baltimore. Philadelphia was established one cent higher than Baltimore; New York, 3 cents higher than Baltimore.

So that I think it may be said that the basic considerations in the fixing of these rates, was the determination to maintain these so-called port differentials. Nevertheless, at these other ports, as well as at Norfolk, with certain minor variations, in general the carriers do, on export traffic, absorb handling at least, if not wharfage, so that as we see it, the handling factor at the terminal exists, it is a part, a comparable part of each line-haul rate at the other ports as well as at Norfolk.

Commr. SPLAWN. That is the issue here, whether it is or not, isn't it?

Mr. MACGUINEAS. That is an issue certainly, yes. Now at the outset, let me make it clear that we recognize the option which is established by the Atchison case in 232 U. S., an option in the carriers to themselves perform the tariff obligation, if they see fit to do so, or to have it performed on their behalf, either as by a terminal operator, which they hire, or by the shipper, and to pay—and if the shipper does it, to pay the shipper an allowance, the maximum of which does not exceed a reasonable amount for performing that work.

The Examiner's report takes the position—and we think it colors the entire report of the Examiner—that in effect we do not admit this option in the carriers. I can only emphasize here that we do. We give freely to the carriers the choice of either performing this handling themselves at the piers or perform it by way of an allowance to the shipper, that is to say, the War Department.

Commr. SPLAWN. You don't mean that the War Department would permit the railroad to take charge of those piers down there and the responsibility of the loading and unloading of this traffic, do you?

Mr. MACGUINEAS. It depends on what you mean by taking charge of the piers. The War Department, of course, must continue to be in control of the entire pier as such, because necessarily it must control safety factors, and it must control ship movement. We do, however, believe, and the Commanding Officer directly testified in this case—

Commr. SPLAWN. That is due to the emergency situation and the exigencies and the necessities, and not due to any arbitrary action. It just has to be that way, isn't that right?

Mr. MACGUINEAS. Yes. Insofar as the Army must assume the overall responsibility for the safety of operations on the pier, protection against sabotage, and the schedule of shiploading, that, of course, must be done by the Army. However, as I was about to say, the Commanding General is willing, and we are willing, if the carriers honestly prefer that choice, themselves to bring their own labor force onto those piers and do this unloading.

Commr. BARNARD. At the direction of the Army? Do you think that is part of transportation?

Mr. MACGUINEAS. Yes, we consider that this is part of transportation, this unloading service on export traffic has



been established at these North Atlantic coast ports for over fifty years.

COMM. BARNARD. I know that, but then the trouble about that is you have taken these piers over, yourself, and you propose that this wharfage shall be handled according to the way the Army wants it handled. You don't want these railroads to do it. You want to continue to exert jurisdiction over that handling yourself, the Army does?

MR. MACGUINEAS. I think it is perfectly proper to say that we are just as willing for the carriers to do that as the carriers are willing to do it. The fact is that the carriers, themselves, never have done it at this pier. For twenty years it has been done by terminal operators. Carriers never had their own labor force, so that the choice, a legal choice which they have, is no practical choice to the carriers as far as they are concerned.

COMM. BARNARD. You want to handle it at the Army's convenience, don't you?

MR. MACGUINEAS. No. In this sense.

COMM. BARNARD. Do you want it handled at the carriers' convenience?

MR. MACGUINEAS. We think that the carriers can have a reasonable opportunity to move the cars into the piers and unload them as reasonably as is consistent with the movement of export traffic. We think that inevitably in war time or in peace time, when you are dealing with a facility which is designed to link up rail traffic with water traffic, you must have, and you will have, coordination between movement of rail car and loading of ship. Of course, you will have that coordination. But we feel that the carriers can be given the opportunity to do that at their reasonable convenience, if they actually prefer to do that themselves, although I think I may be justified in casting doubt upon the carriers' desire to do it, seeing that they never have done it at this pier in all the twenty years or more that they were perfectly free to do it.

COMM. BARNARD. Well, as Brother Splawn says, because of the unusual situation and the exigencies that are now present due to the war, as I get the record, the Army insists that the method of handling should be all the way at those piers within its control, and done according to its ideas of the movement, isn't that right?

MR. MACGUINEAS. Well, no. I think the carriers' position in their brief and exceptions—

Commr. BARNARD. I am not asking about the carriers. I am asking about your position.

Mr. MACGUINEAS. Well, my position, and I reiterate it, is: there is an Army yardmaster at the Army base, of course, and the cars are brought into the piers in coordination with ship movement, and they always have been, and we think the convenience of the carriers is after all a reasonable concept as we see it, and under these circumstances we do not feel that the carriers are deprived of a reasonable convenience in performing this handling, if they chose to do it themselves.

Now, the basic argument of the carriers—

Commr. BARNARD. Let me just ask you one more question and then maybe I will get this clear: is the Army willing, without its own supervision, to permit the carrier to handle that wharfage in its own way without interference by the Army?

Mr. MACGUINEAS. You mean, could the carriers bring in cars and let them sit there a week and not unload them if they saw fit?

Commr. BARNARD. Read him the question.  
(Pending question read.)

Mr. MACGUINEAS. Yes. If the carriers will maintain a reasonable degree of coordination such as we think is no more than to be expected when you are dealing with a facility of this sort, we feel that the carriers can, and the Army is willing to permit them to do that. By that, of course, I do not mean that the Army is going to abandon the piers. Of course it will not, nor do we deem that necessary in order to afford the carriers—

Commr. BARNARD. It is a question here of who is going to exercise this authority. If you are going to say that out of this line-haul rate that this carrier should take care of this wharfage, then shouldn't you say, to be reasonable and fair about it, that they should have the right to do it in their own way without your interference or at least that they shouldn't have to be under your orders in the way it is done?

Mr. MACGUINEAS. Insofar as the handling is concerned, we say they can do it without any unreasonable interference on the Army's part. In other words, the Army is perfectly willing to put itself in the same position that Transport Trading and Terminal Corporation was in with respect to the carriers before the Army took over?

Commr. SPLAWN: May I ask who paid the Transport Trading and Terminal Corporation for its services?

Mr. MACGUINEAS: The carriers.

Commr. SPLAWN: I mean the total amount that they received.

Mr. MACGUINEAS: As far as this record discloses, this source of income consisted of payments for wharfage and handling paid by the carriers, and absorbed by the carriers in the line-haul rates.

Now, the basic defense to the carriers in this suit, as we see it, is that the Army, when it took over the Army base piers, placed them in a position of a private shipper, who has a facility of his own, and purely for his own convenience says to a carrier, "I want you to deliver my export traffic over my pier. I don't want to use your railroad pier."

Now we think that concept is entirely inapplicable to the situation here. In the first place, the Army is operating this pier as a sovereign, for the benefit of the public. It certainly is not seeking any private advantage as a shipper. This Commission has recognized that when the ordinary private shipper, a lumbering mill or what not, seeks to use its own pier when other railroad piers are available,

512 it does that because it is going to get some competitive advantage, some cheaper service through using its own facility and thereby obtaining an advantage over its competitors. Certainly any consideration of that sort is not present here. The Army is doing this because the exigencies of war have forced it to do it, and we think in that connection that Division 2's decision in the elimination of piers at the New York, New Haven and Hartford Railroad in 255 I.C.C. is directly applicable here. The facts there are almost identical with this case, and I hope the court will indulge me just one or two minutes if I make a few references to that report.

Commr. BARNARD: With all these Army regulations at those piers, do you think it is a practical proposition for these carriers to undertake to do this thing?

Mr. MACGUINEAS: Yes. I think that if the carriers made a bona fide earnest effort to cooperate in coordinating traffic they could do it with their own labor force.

Commr. BARNARD: They could manage altogether without any help from the Army, is that what you mean?

Mr. MACGUINEAS: The carriers can hire the laborers who do the unloading. Now that is the service that we are



talking about, and if the carriers want to hire their own labor staff they can do that and the Army will permit that labor staff on the piers, the only regulations which the Army will impose on that would be to investigate those laborers to see that they are not enemy agents or anything  
 513 of that sort, but the Army would not impose restrictions which would in any way unreasonably hamper the efficiency of operation in unloading by the railroads.

Commr. SPLAWN. What is this regulation that you are going to discuss—255 I.C.C.?

Mr. MACGUINEAS. That is right, and that concerns the efforts of the New York, New Haven and Hartford to eliminate certain stations on its line which consisted of export piers which the Army had taken over, just as it took over the piers at Norfolk, and it stated in that case: "Access by the general public to all of these piers is forbidden except by permission of the Commanding Officers."

Commr. BARNARD. What is the citation?

Mr. MACGUINEAS. I am reading from page 306 in 255 I.C.C.

So that there the Army did remain in control in the sense that they even could say, "No one can come on this pier without our permission"; and then on page 307 it discusses the tariff provisions which are in all material respects, in our opinion, identical with the situation here, and the carriers there made the point which the carriers have made in our case, that because commercial traffic has been very largely displaced by Army traffic at these piers, they have become private stations, and are no longer public stations, and the Commission considered those factors and said: "Fluctuations or temporary stoppages of such movement have resulted"—speaking of commercial traffic—"and  
 514 tions. We are of the opinion that the circumstances upon which it now relies as justification for continuance of that service, do not warrant the conclusion that the piers in question should be treated as private piers", and certainly those considerations are applicable with equal strength to the Army base piers at Norfolk.

There is, and has been a certain movement of commercial traffic over these Army base piers. The General has testified that he will continue to permit commercial traffic to be handled over these piers subject, of course, to the paramount priority of military traffic. It should be appreciated.

of course, that the great bulk of this traffic which is moving over these piers and has been moving over them for the past two years consists of materials of war of every type—munitions, food, everything that the Army needs in Europe.

COMM. SPLAWN. And those commodities not only belong to the Government but the ships in which they carry it either belong to the Government or are chartered to the Government, isn't that true?

MR. MACGUINEAS. I think that is a correct statement, although I think the record does not specifically disclose that, but I think the Commission could take judicial notice of that fact.

It is our position that the carriers here in collecting these line-haul rates, which are fixed to absorb wharfage and handling, and yet refusing either on the one hand to  
515 perform the service or to pay an allowance to the Army as the shipper, which has been compelled to do them through default of the carriers, is guilty of unjust discrimination against the War Department, and that argument brings up a factor, another factor which appears to have been completely ignored by the Examiner in his report, and yet which seems to us very basic in consideration of this case, and that is this:

When the ordinary shipper elects to use his own pier instead of a railroad pier, as I said before, he is doing it for his own advantage. The railroad has piers there, it is offering reasonable facilities to the shippers, and I think it is a fair statement that in every case in which this Commission has sustained the carriers in refusing to extend privileges of this sort to the piers of a private shipper, it has remarked that the carriers were providing reasonable facilities of their own at the particular port.

That situation is definitely not true at Norfolk. There is testimony, undisputed by the carriers, that if the only two other piers at Norfolk which are owned by the carriers and which are operated by terminal operators, if those piers were used to full capacity, they could handle not more than 37 per cent of the traffic which is being moved over the Army base piers, and there are only at this port these two other piers owned by the carriers which are in  
any position to handle export movements of traffic.

516 So that the Army is no volunteer here coming in and using this pier because it is going to get some advantage, because it doesn't want the carriers to have the business of operating over their own piers. The Army

has been forced into this situation by the very inadequacy of facilities at Norfolk and the volume of traffic involved.

Not only is that true with the war, it has been true ever since 1920 when these piers were established. The carriers by their own choice have used these very piers as reasonable ones, ones most convenient for the handling of export traffic over the piers. There are a few other piers at Norfolk

slips which have been permitted—the ships have been permitted so that

to fill up because they can't even handle a cargo vessel. And why? Because these piers are the reasonable piers from everybody's standpoint for the handling of export traffic.

Now from all that appears from the Examiner's report, he would have the Army continue to pile up its freight at the two other piers in Norfolk knowing full well that those piers could not conceivably handle that capacity of movement. So that again we say that the situation here is entirely different from that of a private shipper who is seeking to have a privilege of this sort accorded to his own facility.

COMM. BARNABE. It is your position then, as I get it, that it is necessary to the carrier that these piers be made available to it or to them in order that they make delivery?

517 MR. MACGUINEAS. I think that is so. I think course of conduct at this port for twenty years, regulated by the carriers own election, establishes that. They are the ones who chose to use these piers and certainly, under present conditions it is utterly impossible that these piers not be used and that the traffic be handled at all at that port.

Now, the carriers also make an issue that this case is analogous to the plant industry spotting cases. As we see it, there is no analogy at all. In the first place, we are dealing here with export traffic, traffic which moves from car to ship. The unloading from car to pier floor—

COMM. SPLAWN. May I ask a question there? Don't we usually think of export traffic as foreign trade? Now, these ships are under the American flag and is any of this going in foreign trade at all?

MR. MACGUINEAS. Well, I take it the Commissioner appreciates that the tariffs have no limitation in the sense that you speak of it. The tariffs merely speak of traffic designed for foreign countries or words to that effect, and the carriers have never made any question as to the ap-



applicability of the export rates to this movement. They have applied, and continue to apply, the export rates.

Commr. SPLAWN. Is there an issue here as to whether this allowance for loading and handling is a concession for the line-haul rate in order to encourage import traffic and if that is the origin of that allowance then is this the same kind of traffic?

517A Mr. MACGUINEAS. My view is that this record does not support such a conclusion. I think these, what you term concessions—a word to which I object, of course—

Commr. SPLAWN. Well, call them whatever they are—allowances or whatever they are.

Mr. MACGUINEAS. As I say, historically those have developed as a part of the port equalization and port differential rate set up. Again, if I may turn my attention at the moment to the industry car spotting issue which the carriers have sought to inject in this case.

As I say, we are dealing here with traffic which is to move from rail to ship. This unloading service, to me is right in the middle of the transportation movement. It is certainly an essential process in the transportation, and furthermore, it is basically different in this respect: the industry car spotting practice, as this Commission has recognized goes, as concessions, and they are truly concessions, to big industrial plants, to large shippers. They were in a position to exert pressure on a carrier, to say, "We want you either to move your car to plant number so and so in our yard, or we want you to pay us for doing it," and great discrimination resulted, because the industries which were large enough and big enough got those allowances but the

518 little fellows who couldn't exert pressure on the carriers did not get them, and I think, properly of course, that the attitude of the Commission toward the approval of those allowances to shippers for spotting cars in the plants, has been very largely influenced by that factor, recognizing that this was not a general practice which the carriers were opening to all shippers but as I say rebates in effect granted under pressure, but here this question of handling unloading of cars at these export terminals, is a general transportation practice. It has existed at the North Atlantic Coast ports for over fifty years. It has been available to every shipper, subject only to the qualification that in certain instances the carriers, where they had adequate facilities of their own to handle all the port traffic, have refused to extend it to, as I say, a private shipper who had some particular reason of his own for wanting to use

his own facility, but in my opinion, those considerations are not applicable here and hence there is no analogy between this situation and the industry car spotting practice. I should like to reserve the balance of my time for rebuttal.

Chairman ROGERS. Mr. Cousins?

#### ARGUMENT OF WINDSOR F. COUSINS

Chairman ROGERS. Mr. Cousins, have you and Mr. Reynolds divided your time?

Mr. COUSINS. Yes. Mr. Reynolds has kindly allowed me the greater leeway to complete my argument. I do want to save him ten or fifteen minutes.

Chairman ROGERS. Very well.

Mr. COUSINS. As is well known, the railroads do not ordinarily undertake to load or unload carload freight; but from time immemorial there has been an exception at North Atlantic ports with respect to import and export freight.

In my discussion this morning I will use the term export freight, because this case involves that type, but practically all of what I say would be the same with respect to import or coastwise or intercoastal freight.

Subject to definite limitations, the railroads have assumed the obligation of unloading certain export freight, but by no means all export freight, even though the same export rates apply to freight excluded from the so-called port privileges or services. The distinction is important, because the issue in this case comes down to unreasonableness under Section 1, and the complaint contains no alleged violations of Section 3 for obvious reasons, since the Government doesn't compete with other shippers, although Section 3 has generally been the issue in other cases dealing with port practices.

It is therefore important to keep in mind the fact that a large volume of export freight has never been unloaded by the railroads, and consequently there is no presumption that the applicable export rates are unreasonable when the railroads refused to unload as in this case. Just as

the Supreme Court said in the American Sheet and Tin Plate case 301 U. S. 402, which upheld the validity of the 104 order, "There is no custom or practice which has the force of a rule of law, that the line-haul rate includes plant spotting service."

So, should it be found in this proceeding that there is no custom or practice which proves that unloading and wharfage charges on export freight are necessarily covered by the line-haul rates.

Now, some of the important limitations which exclude export freight from the unloading privilege are as follows; and when I talk about unloading privilege I am referring to the service performed by the railroads in physically unloading the cars. The railroads at North Atlantic ports do not make allowances for this type of service. Now some of these limitations are as follows:

First, much of the freight shipped in open-top cars is unloaded direct to vessels, and the railroads have no obligation with regard to that unloading, although the same export rates apply to it.

Second, the bulk freight, heavy articles—

COMM. BARNARD. What is the carrier's obligation here at this point?

MR. COUSINS. In this case the carrier makes a delivery to establish interchange tracks in the yard on the Army base.

COMM. BARNARD. This is all carload movement, of course, isn't it?

521 MR. COUSINS. That is all we are talking about, yes.

Back two miles or more from the piers the Army base has established interchange tracks. It directs the railroads to classify the cars in their own yards, in the railroad yards, to bring them in upon order, and to deliver them at designated places on the interchange tracks, as I say, a couple of miles from the piers. From then on the railroads have nothing to do with the cars.

COMM. BARNARD. Then isn't it a fact too in this case that the Army has its own locomotives?

MR. COUSINS. Yes, the Army does the switching and spotting.

COMM. BARNARD. And the Army gets those cars in after they come to rest, as far as the transportation is concerned, then it takes them and with the Army, unloads them and puts them on these boats.

MR. COUSINS. It moves them first. It has to switch them all over the yard.

COMM. BARNARD. That is right. It does that with its own motive power, doesn't it?

MR. COUSINS. It does, except that the Belt line down there contributes one locomotive to the pool. The army has 7 or 8 crews and the Belt line provides two, and does make a concession, but it is all done by the Army and subject to its control. They switch and spot the cars to storage, to piers, or wherever they should go.

522 COMM. BARNARD. That is the way it has always been done, has it?



Mr. Cousins. That is the way it has been done since the Government took over in 1942.

Commr. BARNARD. That is what I mean, since the Government took these piers over.

Mr. Cousins. Since the Government took over, the Army orders the cars delivered to designated places. I say that is when our obligation ends. We are not obliged to go in and switch the cars and place them a second time. Therefore it is wholly illogical to say that we shall skip that step, and yet come back later, after the shipper has done his own switching and spotting, and unload.

Chairman ROGERS. How was it done prior to 1942?

Mr. Cousins. Prior to 1942 that pier was operated by a public wharfinger, who acted as agent for the railroad. There is nothing in the record as to the physical operation on the pier except that the railroad witness said that the Army had enlarged and extended these interchange tracks—there is nothing else except a brief statement on the part of a Government witness.

At page 121 the complainant's witness says, in response to Mr. MacGuineas question. Mr. MacGuineas had asked him: "Can you state what the customary practice of the carrier was?" And that was before the Army time.

523 Answer: "The customary practice of the carriers was to place the cars on box car freight inside of the piers, adjacent to the berth at which the steamer would dock, and load and unload the freight from these cars and place it on the pier in what is commonly known as the ship's loading berth."

Then on cross examination the same witness made another brief statement—I am sorry I don't have the page notation—but the same witness said something more about that to the same effect.

Chairman ROGERS. Did you agree with that, that that was the practice?

Mr. Cousins. I don't know. Our operating witness was not there at that time and we didn't go into that. The record does indicate that there was some power—that is, that the former pier operators had a little locomotive, and that there was some power on the terminal, and I have no doubt that there was some switching around then.

Chairman ROGERS. Well, we will have to accept what the evidence shows was the practice, and if you don't agree with the Army why didn't you show what the facts were yourself.

Mr. Cousins. I don't disagree with the Army.

Chairman ROGERS. Did that service back there cost the carrier some money?

Mr. COUSINS. The service of unloading the cars, yes, sir.

Chairman ROGERS. Are the same rates being charged now that were charged then?

Mr. COUSINS. Yes, sir.

Chairman ROGERS. What becomes of that money then that it cost the carrier back there—what becomes of it now?

Mr. COUSINS. We retain it as we do in all other similar instances.

Commr. BARNARD. Before the Government took over these piers, you were, according to what that witness said, you were under the line-haul rate unloading this freight?

Mr. COUSINS. Yes, sir, that is correct, and we still do at various piers all along the North Atlantic point.

Commr. BARNARD. But you don't do it for the Army?

Mr. COUSINS. And we don't do it for any other private shipper handling his own freight.

Now the Commission has anticipated a little. I was just coming to the limitations upon that practice, and I stated that the first one was that open cars—freight moving in open-top cars that pay the same rate doesn't get the same service—and I was about to add that bulk freight, heavy articles and tank car commodities are excluded and don't get the free unloading service. I will use the word free in a sense that will be understood.

Chairman ROGERS. All commodities have their own line-haul rate, don't they?

Mr. COUSINS. They are subject to the same line of export rates.

Now, 3. Here is another limitation.

Commr. BARNARD. Wait a minute. If on the line-haul rate, before the Government took over, the carriers were performing this service, what is your argument, what justification can you give, for changing the situation, because of the Army's coming in and taking over the piers?

Mr. COUSINS. Because the next general limitation on the practice, which I am about to recite precludes this being done for the Army.

Now, here is my third limitation that has always existed with respect to this port practice: The privilege has been restricted to railroad or public piers and has never been accorded on piers owned and controlled by the owners of the freight, of which there are many up and down the coast, including some 17 at Norfolk, 20-odd at Baltimore, and more at every port as the record shows, there the railroads have

never gone in on private facilities and performed the service, and we have never made allowances to any shippers on this type of traffic.

In that I have included my fourth exception which I am about to come to, that the unloading service is actually performed by the railroads through their employees or agents and not by shippers for allowances out of the rates, as that would be an alternative which would run  
526 counter to the reasons for the establishment of the practice.

Now these restrictions have been established to hold what might be called a frequent accessorial service within reasonable bounds and also because they were consistent with the reasons for the establishment of the practice, *i. e.*, to enable the railroads to operate their own piers with the greatest economy and efficiency in the aid of export traffic.

The established practices have been reviewed by the Commission in numerous cases in which the limitations that I have recited have been both approved and, on other occasions enforced by the Commission. The railroads have never been required to enlarge or expand the privileges beyond the standard limitations, and their chief concern in this case is that the complaint, if upheld, will result in the payment of allowances to a shipper and open the door to an extension of the free services to innumerable shippers with resulting waste of revenue—to use a phrase coined by the Commission.

As the law now stands, with the approval of—

COMM. SPLAWN. As you point out, there is no question of discrimination between the Army and these shippers who own their own piers.

Now, isn't the question then here as to whether or not the charges you are now electing without—including this 4 cents which the Army wants—is reasonable—a reasonable charge under all the circumstances for carrying this  
527 freight for the Army. Is that the issue?

MR. COUSINS. I think so.

COMM. SPLAWN. And that there is no question at Norfolk as to prejudice or preference or discrimination as between the Army and other shippers, there wouldn't be as between the Army and the owner of these private piers all up and down the Atlantic Seaboard?

MR. COUSINS. That is right. There would be no question of undue prejudice.

COMM. SPLAWN. And what would be done here with reference to unjust and unreasonable charges to the Army on



this particular traffic would not necessarily be a precedent as to what you should charge these private shippers who own their own piers at Baltimore or any other port?

Mr. Cousins. Well, I don't want to get myself on the record as denying any such reasoning as that, but I am very apprehensive that that might not be the case.

Now, on June 15, 1942, the Army took over the so-called Army base at Norfolk for its own exclusive use, according to its announcement, and since that time all of the export freight moving over the facility has been Government freight with a few exceptions of small significance.

Prior to that time the terminal was operated by a public wharfinger employed by the railroads as their agent to unload commercial freight. The tariffs at Norfolk provided for the absorption of wharfage and handling costs which in a number of instances were designated as allowances, 528 although they were not allowances in the true sense, since they were not payments out of the freight rate to shippers, but rather were payments of compensation to an agent having no interest in the freight.

In my opinion there was no requirement involved that the amount of these payments be published in the tariffs at all, except to indicate to shippers that the railroads would bear no greater cost on the piers than those designated in the tariffs.

Now, since the Army took over, the tariff has contained no similar provision with respect to the Army base and the railroads have declined to assume the burden in line with established principles, i. e., that they don't go on private piers to unload freight, and don't pay allowances, that the custody of the freight on the pier becomes that of the shipper—and I will cite a case in a moment in which the Commission has said that the practice can't be accorded in that instance—third, the work cannot be done at railroad convenience.

Now, I cannot take the time to go into the testimony on that point which Mr. MacGuineas has mentioned, but his own chief witness, the Commandant, General Kilpatrick, provided the evidence which shows that there is no possibility that the railroads can perform this service at their own convenience, or in any way except under the full control and direction of the Army. The General so stated again and again.

Now, Mr. MacGuineas didn't make quite clear what  
 529 he intended to say to the Commission when he said  
 that in his opinion the railroads could do it. I am  
 sure he wouldn't say that the Pennsylvania Railroad could  
 go on the pier and unload its freight and the Norfolk and  
 Western go on and unload its freight. He means if they get  
 together, pool their efforts, provide something that is the  
 equivalent of an agency and work in the only way that will  
 meet the Army necessities, and he also comes down to the  
 real solution as employing the Army to do it, then he means  
 possibly it can be done, but even that is contrary to the  
 testimony of his witness who said again and again in the  
 record, that it can't be done by a civilian force, it has to be  
 under Army control. It wouldn't be feasible for the rail-  
 roads to act individually, they could not unload these cars  
 at their convenience.

As to that, he said, "No, they couldn't, they would have  
 to unload them in such a way as we would keep our ships  
 moving."

COMM. BARNARD. They would have to unload them just  
 the way the Army told them to unload them?

MR. COUSINS. Certainly, sir.

COMM. BARNARD. That is what you mean?

MR. COUSINS. Exactly. From hour to hour and from day  
 to day.

COMM. BARNARD. And you are contending on the record  
 that the Army is not surrendering that control over that  
 movement?

MR. COUSINS. That is why they took over the pier,  
 530 your Honor. I asked the General, I said, "You could  
 have had everything you want from the railroads by  
 continuing their agent in possession instead of taking the  
 pier away from them". He said, "Civilian operation  
 wouldn't be feasible". And it is ridiculous to assume—

COMM. BARNARD. Who was that?

MR. COUSINS. That was the Commandant of the pier who  
 was a witness in this case.

COMM. BARNARD. It sounds like an Army witness.

MR. COUSINS. A very good witness too, an honest witness,  
 and his testimony doesn't support the contentions of his  
 counsel.

COMM. BARNARD. It didn't hurt you much, that wouldn't.

MR. COUSINS. It made my case. Finally under the way the  
 Army operates the piers we have made a delivery. Now,  
 when our own agent was on the pier, running them in our

behalf, we had not made a delivery till we unloaded the cars and till they were taken to the pier and unloaded they were in our possession through our agent.

Now, we make a delivery back in the yards. That is a distinguishing factor that comes right under the terminal switching cases. Now, of course, we can ignore the terminal switching cases and all the other laws against discrimination because we are dealing with the Government, but it is a different question as to whether we can be forced to do so or not.

Now, I want to mention very briefly some of the cases. There was a case at Norfolk 15 years ago, in which the operator of this pier, then the agent of various railroads, tried to force the C. and O. to absorb the charges on the pier and make a similar arrangement. The other railroads were in there doing it and the C. and O. wasn't doing it and never has done it, and isn't doing it now. The Commission found that to require the C. and O.—I should cite the case—I haven't done that—Norfolk Ports Commission versus C. and O. 159 I.C.C. 169.

The Commission found that to require the C. and O. to absorb the charges would be equivalent to requiring the railroad to employ the terminal as its agent and it said there is no obligation on the part of that carrier to employ an outside agency to perform the terminal services under the circumstances of this case.

Now, I think the same holding applies to the instant proceeding.

Commr. BARNARD. Well, if the thing could be done at the carrier's convenience, I think what we said in 20911—I wouldn't agree with you on that, but there is force it seems to me on this question of convenience. And if the thing is done at the convenience of the Army, why, we have said something about that in 20911.

Mr. COUSINS. All right. Let me come to another case which deals with a different point. McCormick Warehouse Co. vs. Pennsylvania Railroad Co., 191 I.C.C. 727. This is the full commission decision, and here the Pennsylvania Railroad wanted to do something. The Commission declined to permit the railroad to absorb the charge of the terminal company because it held that the terminals control of the freight would amount to delivery to the consignee under the circumstances in that proceeding and now I quote: "By such delivery to the terminal the freight would lose its character as water-borne and the pay-



ment of an allowance for loading and unloading would be a rebate from the published rail rates on domestic shipments from and to Baltimore.

Now that is exactly what happens on the Army base at Norfolk. We make delivery back in the yard, and the shipper, *i. e.*, the Army, takes full custody, possession, and control, and he stores or does anything he wants with the goods and ships them out on vessels in his own good time. When we deliver the freight on the inside of the yard, our duty is, and under usual principles that would be domestic transportation not subject at all to the export rates, but the railroads have made a special concession in their tariffs applicable on Army and Navy bases, making the export rates applicable nevertheless to all traffic going there, but that doesn't change the fact that under all of the usual principles that is delivery, and the Commission ought to hold that the railroad is done so far as its transportation duty is concerned.

533 Commr. BARNARD. Well, as I understand you, the situation is that the carriers spot these cars at the places where the Army requests them to be placed.

Mr. COUSINS. We don't spot them. We deliver them to interchange tracks.

Commr. BARNARD. I don't mean spot them, but you deliver them to the interchange tracks and that is where, if I get you right, that is where the Army says they want them delivered.

Mr. COUSINS. Yes, sir.

Commr. BARNARD. Is that right?

Mr. COUSINS. They order them there in writing.

Commr. BARNARD. And then pretty entirely with their own motive power they move these cars to where they want to unload them and put them on the wharf—or put them on the—

Mr. COUSINS. Yes, where and when, solely with their own control and direction. That is the contribution we make.

Now there were three cases over the course of the years dealing with a similar situation at Newark, New Jersey. In the City of Newark case, 182 I.C.C. 51, "the Commission held that the failure of the railroads to accord the port privileges at Newark was prejudicial, but otherwise it found that the railroad had no obligation to unload cars, and so it entered an alternative order."

I make that point merely to show that the Commission has never found that there was any obligation with respect to

534 this issue except under Section 3, and there it has made some orders, and it issued an alternative order which the railroad complied with by discontinuing the free unloading on the particular traffic involved. The Commission said: No obligation rests on defendant in the absence of unjust discrimination, to load or unload carload traffic or pay and absorb any loading charge that otherwise would have to be paid and borne by the shipper, and this record does not warrant an order requiring defendant to establish provisions for the absorption of loading charge under consideration at Newark."

Now, in that same case there were private piers involved. What I have said related to the public piers of the city, but shippers having private piers came in and the Commission dismissed their request for any relief because it found that the practice at the other ports—it was not the practice at the other ports to perform the service or to pay allowances on the piers of the shippers, and the Commission said:

"We have consistently condemned the absorption of allowances made by carriers to private concerns for services which are essentially a shipper's service."

Three years later this Division reviewed the same situation at Newark in Newark Chamber of Commerce versus Pennsylvania Railroad, 206 I.C.C. 555. Again, you had before you the same issue with respect to public piers on the one hand and private on the other. As to the private piers there, you held again that no case was made and ~~as~~ 535 to the public piers, the issue of discriminations was dismissed for technical legal reasons.

Three years later in the Weyerhaeuser Timber Company case, 229 I.C.C. 463, the situation was again considered: this time by Division 4, but reconsideration was denied by the Commission later. I want to read a little excerpt from that case because that is the most complete proceeding that has ever been had on this subject and what is said in that report fits ~~our~~ situation here exactly:

"Under the present tariffs the rail carriers undertake to load and unload water-borne freight only at railroad or public piers, but in no event at piers controlled by the owners of the freight. At Baltimore the services are performed only at railroad piers, at Camden, Wilmington, and Trenton only at municipal piers, at Philadelphia at either railroad or municipal piers or at privately owned piers which are operated as public piers, but in no case will the service be

performed on piers controlled by the owner of the traffic. \* \* \* \*

Now omitting a little and continuing:

"The policy of defendants has been to restrict the port practices as much as possible, consistent with adequate service. Piers other than railroad piers are used only when necessary to supplement railroad facilities. In no case is the transfer service performed at a pier controlled by the owner of the traffic. The reasons for this policy are the difficulty of policing the practice, the necessity of performing the handling at the rail carriers' own convenience, the economy resulting from the consideration over a limited number of piers, and the conservation of revenue"; and the Commission went on in that same paragraph to discuss more of the things that I have mentioned today.

Now, I want to turn to two other points. First as to the question of adequacy of pier facilities: Counsel for the Complainant points out that in some of these cases the Commission has noted in coming to its conclusion that the railroad already had adequate piers at the port. I want to make the point that there is no obligation on the railroad to provide piers of any sort to any extent.

Now, if there were, we would have an adequate answer at Norfolk, because as Mr. MacGuineas says, his own witness testified that a couple of other piers in operation there could handle 37 per cent of the traffic passing over the Government pier, and another witness of his said, that the present traffic was ten times normal, so that means that only two of the piers could handle 3.7 times normal traffic and I think we would be sound in contending that we didn't have to provide facilities for such abnormal traffic as ten times normal, because of war, but we have a better defense than that.

There was never any obligation on the railroads under the common law to provide piers where vessels might lie.

Piers are stations for steamship companies, it is up to them or to them or to somebody else to provide their facilities. The Interstate Commerce Act has never placed the duty on the railroad and we have never undertaken it in our tariffs. The only requirement that the Act has ever had is Section 6, paragraph 11, which puts on the railroads the duty to prove a connection to a pier, to interchange with vessels, that is exactly like the requirement of Section 1, paragraph 9, which says that the rail-



roads must provide a connection to a private industrial track, but we are not required by law to construct industrial tracks, and there are a number of other decisions on that point, including many of this Commission.

Chairman ROGERS. Was there any evidence in the record as to the reasonableness or unreasonableness of these rates, the line-haul rates, assuming that you did not perform this service?

Mr. COUSINS. Yes, sir. That is going to be my last point, if you will give me one more minute. We put all that evidence in. It is one-sided but it is there. I was just saying that under Section 1-9, the switch connection case, there is plenty of authority saying that we do not have to do more than provide a connection, but I have been unable to find any case dealing with the question of providing piers and I think that the reason is that nobody has ever thought that the railroads had any duty in that respect, and as you well

know, most of the piers of this country are provided  
538 by states or municipalities, although steamship companies, railroads, and private shippers have provided piers for their own convenience. The Rivers and Harbor Act of 1919, indicated the view of Congress that all ports should have public piers, publicly owned, and in furtherance of that expression, an investigation was instituted before this Commission, known as wharfage charges at Atlantic and Gulf ports, 157 I. C. C. 663.

The purpose of the proceeding was to encourage the development of publicly owned piers by requiring the railroads to make adequate charges on railroad piers; thus eliminating all free service such as are involved in the instant proceeding.

The position taken by the Secretary of War was quite different from that of the Army in this case, and the report of the Commission indicates that "the railroads have neither the obligation to provide piers nor to absorb charges on non-railroad piers."

Now, I will devote a couple minutes to the question of reasonableness of rates. The Complainant offered no evidence to show that the export rates through Norfolk were unreasonable, as applied to its traffic. The defendants showed that the export rates were depressed on a low level. That results from the fact that Norfolk meets the Baltimore basis of export and import rates, voluntarily, and it puts the rates through Hampton Roads, the export rates and import rates, on a much lower basis, mile for mile, than the rates to any other North Atlantic port.

539 possibly excepting Boston which does the same thing.

Now, the domestic rates prescribed to Norfolk and to Boston in the Eastern class rate case, are quite different. Norfolk is higher reflecting mileage, but the export rates are the same. Therefore in considering the reasonableness of the rates the Commission should bear in mind the depressed level of those rates as they are today.

Now, second, we showed that in making the rates no factor was included to cover the loading and unloading of freight. When the carriers give the service, it comes as close as anything can come to being a free service. Of course, technically it must be covered by the rate, but when it is not given, or if it should be abolished at all piers, there would be no grounds for concluding that there should be a reduction in the rates because we show at length in the record that the very manner in which the rates were made indicates that nothing was added for these port services.

Now, just in a word, the reason for that is that the domestic rates to Baltimore in the Eastern class rate case were taken as the standards and the export rates were made the same and then of course, the ports were adjusted, and, of course, none of the service was in the domestic rates prescribed by the Commission.

Now, third, as to whether the rates are reasonable or not, this point should be remembered that if the Army  
540 were a private shipper it would be paying the domestic rates, all substantially higher because its transportation is essentially domestic, except for the concession we already made of making the export rates apply, especially through Army and Navy bases.

If the Army's theory in this case is upheld I see no reason why it will not apply to other private shippers, to other private piers all up and down the coast, scores of them. If it shouldn't, I see no reason why it wouldn't apply to other Army and Navy bases, the permanent bases up and down the coast. The Navy base at Norfolk not far north of this base is always in operation, it is a permanent base, it isn't like this one, it is much larger than this base, it really handles traffic, and yet we have never gone in there and performed the service, nor have we been requested to and the same is true as to the other permanent bases up and down the coast. There is nothing in the theory of the Complainant's case that shows that the Army is paying rates unlawful from any standpoint, and particularly from the standpoint of Section 1.

COMM. BARNARD. The burden would mostly be on the Complainant to establish that after the 4 cents had been exacted the base rate would still be a reasonable rate.

MR. COUSINS. Yes.

COMM. BARNARD. And that burden was not discharged, you say?

MR. COUSINS. No. And the Examiner so finds.

541 CHAIRMAN ROGERS. Mr. Reynolds.

#### ARGUMENT OF CHARLES P. REYNOLDS.

MR. REYNOLDS. May it please the Commission, may I inquire how much time I have.

CHAIRMAN ROGERS. About eleven minutes.

MR. REYNOLDS. I am appearing in behalf of the Southern Carriers who are named as defendant in this case.

The Southern Carriers do not as a rule undertake to handle export-import, coastwise or intercoastal freight between the cars and the pier floors. In other words, wharfage and handling are generally in addition to the rates. But in certain instances, these carriers do undertake, usually through agents, to perform such handling and to absorb the wharfage charges.

Now, at Norfolk this is done only where the Baltimore basis applies and where competition requires it. In other words, since the wharfage and handling charges are absorbed only where the Baltimore basis applies, and where competition requires it, the rate in connection with which that service is undertaken, are depressed rates, and consequently there would be no basis for reducing already depressed rates by the amount of the wharfage and handling charges, if wharfage and handling charges were not absorbed.

I had thought that I would say something about the tariffs of the Southern Lines and go into some detail with regard to operation of the piers. I find I won't have

542 time to do that and all I want to say is: When the Southern Lines do undertake to absorb wharfage and handling charges they specify the pier or the wharf through which the traffic must move.

Now, the Army base piers at Norfolk are not listed in their tariffs as piers through which the traffic may move or the wharfage and handling charges be absorbed. The operation of the piers under Army control has already been dealt with, but I do want to emphasize the fact that the carriers cannot perform the loading and unloading service at their convenience, that the piers must be operated under



the control of the Army, and that it would be utterly impossible for the railroads to perform the service themselves.

If I may be pardoned for doing so, I just want to read two short excerpts from the Examiner's proposed report on this point. He heard the evidence, and he is an able and experienced examiner, and I just want to give you what he says about it. On Sheet 2 he says this, "This work could not be performed by defendants according to their convenience. The freight has to be handled according to priorities and the various unusual and changing conditions that face the Army. For instance, ships that have been partially loaded or unloaded sometimes have to be temporarily moved away from the piers and out into the stream to make room for emergency loading of other ships. Some cars may be unloaded immediately upon placement while others may be held a short time or the freight therein

543 unloaded and stored on the piers or in warehouses before being put aboard ship. Frequently the Army has had to load ships day and night to meet a convoy deadline hour, based on calls from overseas for immediate supplies or munitions. All activities on the piers must be supervised and coordinated by one head."

After hearing all this evidence, the Examiner concluded on Sheet 3 of his report, "Obviously anything but Army operation is out of the question."

Now since the railroads cannot perform this loading and unloading service at their own convenience then the principle that you announced in the *Ex Parte* 104 cases shows that they are not obliged to perform this service and they are not obliged to make an allowance if they do not perform it. Actually the Army knows full well that the railroads can't perform the service, and what they are really trying to do is to force the railroads to hire the Army to perform the loading and unloading service and pay them an allowance.

Now, since the railroads have the right to furnish any facility that the law requires them to furnish, they certainly can't be required to hire the Army to do the loading and unloading. As a matter of fact in their exceptions the Army states, "Of course the Army cannot as such require the carriers to hire it to effect shipside delivery at Army base piers," and yet that is really what they are trying to do.

## ARGUMENT OF ARTHUR L. WINN, JR.

Mr. WINN. I speak for the North Atlantic Port interests represented by the following agencies which were allowed to intervene. The Baltimore Association of Commerce, the Chamber of Commerce and Board of Trade of Philadelphia, the Norfolk Port Traffic Commission, the Port of New York Authority, the Richmond Chamber of Commerce, the State Port Authority of Virginia.

At the outset I wish to make it clear that the North Atlantic ports take no position regarding the controversy between the government and the railroads. Our only purpose is to safeguard the very important port differential rate adjustment and to prevent its being disrupted; and to have the shipside rates continue to be published as one factor rates, as they have been for fifty years.

These ports present a united front against that part of the complaint which suggests that the rates to the Army piers at Norfolk should state separately the terminal and line-haul charges. A joint brief in opposition to the proposal was filed by these ports and they now present a joint oral argument against the proposal. To put the proposal in its proper light, it should be said that the Government does not emphasize or even press the issue. It was included in the complaint along with other prayers, apparently on the theory that it somehow strengthened the com-

545 plaint. Actually the Government introduced no evidence directed to this issue, and your Honors have heard nothing about it in the Government's oral argument this morning, but any possibility of an order of this Commission requiring the separation of terminal and line-haul charges at one of the highly competitive North Atlantic ports, is of grave concern to each and all of those ports, and they introduced affirmative evidence showing the undesirability and the harm that would flow from any such action.

I should emphasize that this evidence, against the proposal, is the only evidence in the record bearing on the matter. The central issue in this proceeding is whether the defendant railroads have been discharged from their responsibility to make delivery at shipside at the Army base piers numbers 1 and 2 at Norfolk.

The Government states that the railroads have such an obligation. Defendants say in substance that if they had such an obligation, they have been discharged by the Government action in taking over the control and operation of

the piers. The North Atlantic ports are not concerned with that issue. If you find that the defendant railroads have been discharged from their duty to make shipside delivery, that disposes of the complaint and it must be dismissed.

On the other hand if you find that the railroads have not been discharged we feel that you should limit your findings and conclusions to the duty of the carriers to perform their obligation, either by performing the required service themselves or by paying an allowance, leaving to the carriers the decision as to which means to employ in fulfilling their duty. We feel that this is the legal limit of the Commission's action on the complaint. As the Examiner has correctly stated under the principles established by the Supreme Court: "The Army has not been hired by defendants to provide wharves or perform the handling service. It cannot require them to hire it."

This principle is familiar and has been followed by the Commission in many cases.

If this view of the law is correct it would seem that the Commission should never reach the issue of requiring a separate statement of terminal and line-haul charges. If the Commission must leave to the carriers the decision whether to perform the work themselves or pay an allowance in lieu thereof, any alternative to the paying of an allowance by a separate statement of the terminal charges, with a corresponding reduction of the line-haul rates would also seem to be a matter which should be left to the discretion of the carriers. The highly competitive character of the rate adjustment to the several North Atlantic ports is well-known. The port differential adjustment is based on one factor rates, which include both terminal and line-haul services and apply to and from shipside. The present port differential adjustment has resulted from decades of port and railroad competition for water-borne commerce, and is not likely to be disturbed. It certainly

546A should not be disturbed except on the most careful consideration, and based on an extensive record, examining at length the results which would flow from any particular change. As I have said, the Government offered no evidence on the issue, and the only evidence of record bearing on the matter is that introduced by the port in opposition. Any separation of terminal charges at Norfolk with corresponding reductions or changes in the line-haul rates, would either give Norfolk an advantage in line-haul rates or, because of the competition of the other ports,



spread to the other North Atlantic ports. In either case the result would be to destroy the port differential adjustment. The separate statement of handling or wharfage would make it practically impossible to maintain a stable rate relationship in the total shipside charges as between competitive ports.

COMM. BARNARD. It is necessary for a decision in this case to go into that question as I see it.

MR. WINN. Your Honor, I am trying to emphasize just exactly that because the complaint here asks your Honor to do that, and we presented evidence showing the harm and the injury that would flow from any such order of your Honor's, and the thing is of such importance that we could not risk or sit by complacently with the United States filing a complaint asking that such a thing be done, and it is for that reason that I have asked for time this morning.

To emphasize the seriousness of the matter, our view is, as you have expressed, that your Honors need not ever reach that question. Each port would naturally seek, in a separate statement of terminal charges to gain a competitive advantage by reducing its separately stated terminal charge. Should any port seek to obtain an advantage, other ports would for self protection be required to enter the competitive rates. It is doubtful whether stability could be restored following such competitive rate cutting until properly related one factor rates were reestablished.

The Port of Philadelphia, as well as the ports of Baltimore and New York, would consider any reduction in the present line-haul rates to Norfolk to be detrimental to them and unduly preferential of Norfolk; conversely, Norfolk would consider the addition of terminal charges to the present line-haul rates only to that port to subject Norfolk to prejudice.

In conclusion, I would like to refer to the Commission's decision in wharfage charges at Atlantic and Gulf Ports 157. I.C.C. In that proceeding the Commission gave exhaustive consideration to the question of the separate statement of wharfage and terminal charges. Originally a separation of these charges out of the one factor rates was presented as to the Southern ports alone. The Commission recognized that such an important question should not be decided without asking the question at all Atlantic and Gulf Ports at one time and on one record. The proceeding was reopened and broadened to bring within the investigation all of the Atlantic and Gulf Ports.

548 A most extensive and exhaustive investigation was had. The arguments for and against a separation of charges were carefully considered and a conclusion reached that no separation should be required. This conclusion was reached in spite of the most ardent advocacy of separation by the United States Shipping Boards and by practically every port except New York.

That decision should not be reversed here and a record which contains no evidence other than that presented by the ports, with a united front against separation.

Thank you.

Chairman ROGERS. Mr. MacGuineas?

#### REBUTTAL ARGUMENT OF DONALD B. MACGUINEAS.

Mr. MACGUINEAS. I fear there has been some misapprehension as to the mode of delivery at these piers. We think it is not correct, as Mr. Cousins has stated, that the carriers discharged their delivery obligation by putting the cars on the interchange track. The carriers today are making delivery of those cars right on to the pier through the Belt line. The carriers have done that ever since 1920. Our witnesses have testified to those facts, have been present, was engaged in shipping operations, at Norfolk for twenty years, and he stated without contradiction that the manner in which the Belt line delivers the cars to the piers, is the same today as it has been for the last twenty years.

549 Commr. BARNARD. You are taking these cars from the interchange track with your own motive power?

Mr. MACGUINEAS. Permit me to explain that.

Commr. BARNARD. You are, aren't you?

Mr. MACGUINEAS. Yes, under the following circumstances: When the Army took over it entered into an arrangement with the Belt line, whereby it was recognized that it was more convenient for both sides, instead of having the Belt Line make an original placement of each car on to the pier and then have the Army engines handling all switching and interchange, that would produce confusion between engines and loss of efficiency. So, instead of that it was agreed that the Belt line and the Army would pool their engines and indiscriminately handle a car between interchange track and yard as needed. However that was merely a substitute by the Belt line of its obligation to deliver those cars on to the pier.

Commr. BARNARD. Was that arrangement put in the record?

Mr. MACGUINEAS. Yes, sir. General Kilpatrick testified as to the substance of that arrangement, and there is nothing in there to give any indication that the Belt line has ever taken the position that it made its placement by putting the track

cars on the interchange traffic. On the contrary as I have stated, they have for twenty years consistently run the cars right on to the piers and run them off again, and in substance they are doing the same thing today.

550. Now, I should like the Commission to examine very carefully General Kilpatrick's testimony. He was the port

Commandant of the ~~report~~. As has been stated, he was a very candid witness. I think his testimony was misapprehended in this respect. When he says there has to be over-all Army operation, he is speaking not about the particular transaction here in issue, to-wit, the unloading of cars to the pier floor, he is speaking about the operation of the entire facility and in particular the loading and unloading of the ships and the coordination of traffic on the pier with ship loading. Of course as I stated before that has to be done under Army supervision but that is no concern of the carriers. We don't ask the carriers to see that the freight gets into the ship or that the ship ever gets off of the pier. All we are saying to the carriers: they should either perform or make an allowance in lieu thereof, of the specific obligation to unload from car to pier floor. I want also in conclusion to make it clear that as we see this case, the question of reasonableness of the line-haul rates *per se*, is not important in this case.

Commr. BARNARD. Why not?

Mr. MACGUINEAS. We say that when here for over twenty years the carriers have maintained shipside rates, and have absorbed, in those rates, the handling of the cars on the piers, their failure to do that, their discrimination against the Army as between all other shippers at Norfolk, 551. is an unjust practice under Section 1-6, it is an unjust discrimination under Section 2.

Commr. BARNARD. Do you think that would relieve you of the burden of establishing whether that would be an unfair rate?

Mr. MACGUINEAS. Yes.

Commr. BARNARD. Do you think that practice would relieve you from making a record here on this rate?



Mr. MACGUINEAS: Yes, sir, I do. In other words, all we are saying, we are asking the carriers to live up to their obligations which they, themselves, have set out and practiced for 25 years, and the question as to the reasonableness of the return of the carrier—absence of that is immaterial.

Commr. BARNARD. That isn't the question.

Mr. MACGUINEAS. Reasonableness of the rate.

Commr. BARNARD. Decidedly immaterial.

Mr. MACGUINEAS. Our point is this: these carriers, taking advantage of the exigencies of war-time necessity have seized this opportunity to exact from the Government, a return of 4 cents a hundred pounds more than was contemplated by their own rates on more than they are receiving from other shippers in the Port of Norfolk. That is the essence of our case.

Commr. BARNARD. But Mr. MacGuineas, I repeat that I think that you have the burden of showing that the maximum remaining would be a fair rate for the carriers; to the carrier, after you had exacted the 4 cents. You didn't do  
552 that as I understand the record?

Mr. MACGUINEAS. Well, as I understand the carriers' contention, they make the position that we have not proven that to receive the line-haul rate without rendering this terminal service, would be above the reasonable maximum. That is their position. Well, we say that is immaterial. The rate is somewhere within the limits of reasonableness, and the carriers, as I say, for 25 years, have assumed that obligation, they are failing to discharge it with respect to the Army, and with respect to the Army alone, and thereby are keeping for themselves 4 cents a hundred pounds.

Chairman ROGERS. The case will be taken under advisement.

(Whereupon, at 11:50 o'clock a. m. the oral arguments in this case were concluded.)

554 Before the Interstate Commerce Commission

Docket No. 29117

UNITED STATES OF AMERICA,

VS.

ABERDEEN AND ROCKFISH R. R. Co., *et al.*

*Reporter's Transcript of Oral Argument*

Hearing Room "B",

Interstate Commerce Commission Bldg.

Washington, D. C.

Wednesday, April 3, 1946

The above-entitled matter came on for oral argument before the Commission at 10:00 o'clock a. m.

PRESENT

Commissioners BARNARD (chairman), AITCHISON, PORTER, LEE, MAHAFFIE, MILLER, SPLAWN, ROGERS, and ALDREDGE.

APPEARANCES:

DONALD B. MACGUINEAS, Department of Justice, Washington, D. C., appearing for United States of America, Complainant.

BENJAMIN J. BROOKS, 523 Mills Building, Washington, D. C., appearing as *Amicus Curiae*.

WINDSOR F. COUSINS, 1740 Broad Street Station Building, Philadelphia 4, Pennsylvania, appearing for Defendants.

CHARLES C. REYNOLDS, 1110 Shoreham Building, Washington, D. C., appearing for Southern Carriers, Defendants.

ARTHUR L. WINN, JR., Investment Building, Washington, D. C., appearing for Baltimore Association of Commerce, Chamber of Commerce and Board of Trade of 555-556 Philadelphia, Norfolk Portsmouth Traffic Commission, the Port of New York Authority, Richmond Chamber of Commerce, and the State Port Authority of Virginia.

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PROCEEDINGS

Chairman BARNARD. The Commission will hear argument in Docket No. 29117, United States of America against the Aberdeen and Rockfish Railroad Company and others.

Before we start into this argument, there is an argument set before Division 2 which will not come on until two

o'clock, as those who are interested in that argument, of course, will be excused if they don't want to remain.

You may proceed.

#### ARGUMENT OF DONALD B. MACGUINEAS

MR. MACGUINEAS. May it please the Commission, in this case, Division 2 has found, with Commissioner Barnard dissenting, that the practice of the railroads which served the port of Norfolk in refusing to give the Army either an allowance or to perform the service of handling at the Army base piers is an unjust practice and an unjust discrimination. Division 2 has ordered the correction of that violation of the Act by awarding reparations and issuing an order for compliance as to the future. The government, of course, contends that the position of Division 2 is entirely correct, that they have found the facts as they are supported by this record and that their application of the law to the facts was proper.

At the outset, I think it is of some interest to the Commission to appreciate just which carriers are actually  
558 interested in this case. Several of the trunk lines have petitioned for rehearing and reconsideration. Of course, only one, the Pennsylvania, is directly interested in this case, it being the only one of the trunk lines which actually serves the Port of Norfolk. The carriers themselves have shown in this case that the absorption of the handling charges involved is not passed back, in other words, is entirely absorbed by the final carrier.

Commissioner MAHAFFIE. The Aberdeen and Rockfish is taking no position?

MR. MACGUINEAS. The Aberdeen and Rockfish, as might be expected, has not even appeared in the case. The Southern Carriers do have an interest in the case, although it is a relatively minor one, for the provision for shipside application in their tariff is considerably more limited than in the case of the other carriers.

The two carriers which I think may fairly be said to have the greatest interest in this case are the Virginian and the Norfolk and Western. I think there could be no question that those two carriers handle the greatest volume of traffic over the Army base piers, and it seems to us not without significance that those two carriers have never actively resisted the government's position in this case. Indeed, the Norfolk and Western is now out of the case for all practical purposes because they have made a settle-



559 nient with the government pursuant to which they have paid in full the reparation at the rate awarded by the Commission with three per cent interest and have also agreed to continue to pay reparations at that rate on all applicable future shipments unless and until the order of Division 2 might be reversed and another tariff is entered which makes a satisfactory disposition.

Chairman BARNARD. Well, we have got lots of cases where they are willing to do that. They are not very controversial, these terminal situations.

Mr. MACGUINEAS. I should like also to make it perfectly clear that the position of the government, which I think has been somewhat obscured in some of the carriers' briefs, is that our complaint is as a shipper. It is not a complaint as a terminal operator. We do not contend, and have never contended, that as a terminal operator we would have any right to compel these carriers to hire us to perform the handling services. Our position is that the government is a shipper, which is shipping under line-haul rates, which for 20 years or more at the Port of Norfolk have included within the line-haul rate the absorption of the charges of the terminal for handling the goods; that the carriers ever since the Army took over that pier, due to the necessity of the war, have continued to compel the government to pay the full line-haul rate and yet have refused to render

560 that service which they hold out as part of the service covered by the line-haul rate. So that I trust the Commission will bear in mind that the cases which are cited in the carriers' briefs with respect to the right of a competing terminal operator to handle goods for railroads have no application here because our case is not founded on that theory at all.

As to the facts in the case, I think I need stress only two points here, since, as I have said, we consider that they are very ably stated in the report of Division 2. The Division has found that the control of this terminal by the Army was necessitated by war time measures in controlling the movement of ships and the loading of those ships which, of course, during the war had to be under the most strict and careful supervision.

The Commission has also found that, subject to necessary efforts against sabotage and fire, etc., that the Army has been and is willing for the carriers to come onto the Army base piers and perform themselves that service which they have held out in their tariffs, and to perform that

service in the very same way that they have been doing for 20 years or more.

There has been a question raised as to whether the carriers could have obtained sufficient civilians to handle that service in view of the extensive increase in the volume of traffic moving over the pier. In that connection, I wish the Commission to bear this in mind: A considerable portion of the traffic which moves over the Army base piers has been traffic which does not move under shipside rates as to which the Army has never made a claim and which are not in any respect involved in this case.

Now, that traffic would, of course, necessarily be handled at the pier by the Army because the tariffs of the carriers have no obligation for shipside handling of such traffic, and a considerable part of the total labor for handling traffic at the pier would be devoted to such traffic, and, therefore, the fact that the Army actually used Army labor, soldiers, to facilitate movement at the pier does not demonstrate that if the carriers have made a bona fide effort to perform their tariff obligation and perform the handling with respect to traffic moving under such tariffs that they could not have found sufficient civilian labor to do so.

Chairman BARNARD. Do you think the furnishing of these facilities not being required by the carriers is transportation in this situation?

Mr. MACGUINEAS. Yes, your Honor, and I intend to deal specifically with that. I will come to that directly.

Chairman BARNARD. In the first place, you excluded the carriers, you would not let them do it.

Mr. MACGUINEAS. We disagree with that position, and Division 2 has expressly found that the attitude of the Army was to permit the carriers to perform that service if they chose to do so. The carriers, on the contrary far from seeking to do so have resorted to every effort, if not subterfuge, to avoid performing their tariff obligation.

Commr. MAHAFFIE. How did the Army come to begin doing it if it was the obligation of the carriers and they were free to perform it?

Mr. MACGUINEAS. Because on the day that the Army took over the carriers terminated that service, refused to do it, and never since then have offered to handle a single car on those piers, and the Army was in a position where traffic of the most vital sort to the winning of the war was piling up on the piers. It could not wait and indulge in an ex-

tended controversy with the carriers as to who had the obligation to handle the traffic. It had to move that traffic.

COMM. MAHAFFIE. How was the refusal to handle it by the railroads evidenced?

MR. MACGUINEAS. Well, in this record the refusal was evidenced chiefly by the ignoring of the Army's request for performance of the service.

Chairman BARNARD. Yes, and the inter-position by the Army because they said, "You don't know how to do it and we do, and you haven't got the people and you have,"  
563 so we are going to do it under our regulation.

MR. MACGUINEAS. I respectfully submit that I do not think that the record bears out that interpretation of the facts. I think Division 2's report on that is in accordance with the record.

COMM. MILLER. How much service do you claim the railroads should have to perform?

MR. MACGUINEAS. Just what should they do?

COMM. MILLER. Just what is that service?

MR. MACGUINEAS. Just what is it that the carriers should do?

COMM. MILLER. Yes.

MR. MACGUINEAS. Yes. The only specific service that is in dispute in this case is the matter of unloading cars which are on this pier tracks, unloading that freight from car to pier floor in proximity to the ship's berth, and conversely with respect to import traffic loading the car from pier floor to the car on the track.

COMM. MILLER. The railroads did, however, spot the cars on the piers?

MR. MACGUINEAS. Yes, Mr. Commissioner. That is the point to which I wish to devote myself next.

One of the chief contentions of the carriers and one of the grounds of dissent of Commr. Barnard was that the industry car spotting cases principle was applicable  
564 here. We think that is not so for several reasons.

In the first place, for many years at this port, at this very facility, it has been the practice of the carriers to place incoming cars onto the pier track. Not only was that the practice before the Army took over this facility, it continues to be the practice under Army control. There has been some confusion in the record as to that fact, and I think the confusion is due to the fact that when the Army took over it entered into an agreement or cooperative arrangement with the belt line in which they said in effect it will be more economical for everybody instead of having the belt line spot on the pier each particular car which has



freight moving under tariff for shipside application and having the Army spot each particular car which has freight not moving under such tariff, we will merely combine our efforts and jointly handle whatever cars happen to come to hand. That arrangement is not in anyway in derogation of or in nonrecognition of the obligation of the carriers to place the cars onto the piers, an obligation which they themselves by a practical course of conduct for over 20 years prior to Army operation have recognized. We say that when you are considering you are here dealing with export and import traffic, certainly it is in the interest of the carriers and of the railroads alike that that traffic shall be handled in an expeditious and as efficient a manner as possible. Therefore, this handling, quite unlike the car spotting situation, involves a necessary step in the very midst of the transportation process, and certainly such handling is involved as a part of transportation by the very fact of the carriers publishing a shipside tariff. This tariff would be meaningless unless the carriers thereby held as a part of their transportation service the bringing of their car to shipside. That is the very meaning of "shipside tariff."

Now, unless that is a part of transportation, the carriers have been deceiving themselves for more than five whole years because that is the very thing that they have been doing generally, not only at Norfolk but at every other North Atlantic port and other ports in the country as well, and furthermore the nature of the practice involved in the industry car spotting cases is entirely different. In the rationale behind those cases, as the Commission of course recognizes, is there you had a situation; you had these large shippers who were in a position to exert pressure on a railroad to ~~get~~ rebates and whom the railroads sought—whose traffic the railroads sought, and they were willing to grant rebates in order to get their traffic, and essentially the car spotting practices which this Commission condemned was merely the condemnation of a discriminatory rebate in favor of the large shippers who had these big industrial plants and against all shippers who did not have such plants.

Now, obviously there is no such kind of rebate or discriminatory practice involved here.

The Army in asking for this service is not seeking any discrimination against any shipper. It is seeking the same service which the carriers have rendered other shippers at Norfolk and at other ports, so we say we are being dis-

criminated against, and certainly the corresponding decisions are no basis for continuing that discrimination against us.

Now, in connection with the car spotting argument, I should like to call to the Commission's attention the very recent decision of the Supreme Court. This was not reported or even decide at the time the briefs were in. It was decide on January 2, 1946. It is the case of Railroad Retirement Board vs. Duquesne Warehouse. That is not yet in the United States Advance sheets, but it is in the Supreme Court Reporter, Volume 66, No. 6. That case involved the question as to the application of the Railroad Retirement Act which performed, among others, the function of loading and unloading freight from cars which came into the warehouse and stayed there and then went on. The Supreme Court expressly took the position that the test of coverage under the Railroad Retirement Act was the same

as the definition of "transportation" under the Interstate Commission Act, and the Warehouse there, the Duquesne Warehouse, took the position, "what we are doing in loading and unloading these cars is not a part of the transportation service because it occurs either before transportation begins or after it has ended." In other words, exactly the same position which Mr. Cousins at least has advanced with so much vehemence in the present case. But the Supreme Court disposed of that contention completely and said this:

"The question is whether Duquesne performed any service in connection with transportation of property by railroad. Duquesne loads and unloads the carload shipments as they arrive at and depart from its platform. We have noted the loading and unloading service rendered by Duquesne. The duty of unloading carload freight ordinarily rests with the shipper or consignee, but it is a transportation service within the meaning of the Interstate Commerce Act," citing several authorities.

"We do not decide whether services other than loading and unloading which are performed by Duquesne are in the same category. It is sufficient for the disposition of these cases that the loading and unloading services performed by Duquesne are services performed in connection with transportation of property by railroads."

Certainly in this case the loading and unloading services held out by the carriers in their tariffs at the Army base piers are services performed in connection with transportation. They are a part of the transporta-

tion services, as the carriers themselves have recognized by promulgating shipside application tariffs and by performing that service voluntarily.

Chairman BARNARD. Oh, well, because they do not violate Section 6, that does not mean that the tariff is right. They put things in tariffs that ought not to be in there under the line-haul rate.

Mr. MACGUINEAS. I think when you have such a consistent course of conduct for over half a century by a great many of the largest railroads of this country, a practice acquiesced in by carriers and shippers alike, it certainly is of very great persuasive force.

The other position taken by Commr. Barnard in his defense is that we were not entitled to any relief because these rates were depressed; that they were reasonable, having regard to the performance of line-haul transportation without the handling service. As we see it, that is an irrelevant consideration, and I think I may illustrate that by a very simple, homely example.

Suppose the carriers have a tariff rate of \$1 for transportation between Washington and Baltimore and as to one passenger, they say, "All other passengers we carry into the Baltimore terminal but you get off five miles outside of Baltimore. That is all the service we are going to render you, but we still charge you the \$1 rate," and then the carrier comes in and defends such a practice by saying, "Well, the rate of a dollar is reasonable for transportation from Washington to a point five miles short of Baltimore."

We just think that is not relevant when the issue is, as here, an unfair practice which consists of not giving to one shipper that service which is called for by the rates and which is rendered to other shippers in a similar position.

Commr. MAHAFFIE. Well, are you here on some theory of discrimination against the Army?

Mr. MACGUINEAS. Yes, we are, and Division 2's report finds that this practice of refusing to give handling service to the Army and yet charging the full line-haul rate is a discrimination against the Army as compared with other shippers in a similar position.

Commr. MAHAFFIE. Do you bring any movements for other shippers that you claim discriminated against the Army?

Mr. MACGUINEAS. Well, there is no complaint that other shippers generally are getting the handling service at the piers for the line-haul rate. We are paying the same rate



and are not getting the service. That is the discrimination.

Chairman BARNARD. A Section 2 proceeding.

569 Mr. MACGUINEAS. That is right, as we say, and Division 2 agreed.

One final point as to the intervention of Mr. Brooks. We agree with Mr. Brooks that what the carriers are doing here is charging us a rate which includes 4¢ per hundred pounds for handling service and which we are not getting. If I understand Mr. Brooks to contend that the carriers could not perform that service if they wanted to, we disagree and Division 2 disagrees. The question as to the mode of relief seems to us no longer in the case. We suggested as an alternative form of relief breaking down the rates into a line-haul charge with a reduction of 4¢ per hundred pounds and a separate charge for the terminal service. The Atlantic Ports resisted that. They contend that will break down the rate structure existing between the different ports, and, frankly, in the light of the Commission's decision in 157 ICC on that question we were not optimistic in persuading the Commission to adopt that form of relief, and it is quite immaterial to us. Division 2 has given us an alternative form of relief which is entirely satisfactory to the government, and hence I submit that the report of Division 2 is entirely correct on the facts and the law and should be affirmed by the Commission.

May I reserve time for rebuttal?

Thank you.

570 Chairman BARNARD. Mr. Brooks.

#### ARGUMENT OF BENJAMIN J. BROOKS

Mr. BROOKS. In the first place, I want to thank your Honors for permitting me to intervene in this matter as the friend of the Court. I worked on this case for a short time in the fall of 1943 when I was an officer in the Army Transportation Corps and have followed the case right on since then with a great deal of interest.

My approach to the case is somewhat different than that advanced by the government, whose principal ground for complaint is stated to be the failure of defendants to perform the services on shipside traffic at the Army base piers 1 and 2.

Now, as I read the Division 2's report, the government did not win a hundred per cent victory, that is, there was no reparation awarded on shipments which the N&W was the last line-haul carrier from September 25, 1942, through June, 1943.

Now, the question, as I see it, is whether the carriers are entitled to keep the 4c per one hundred pounds, which is included in the single-factor shipside rates to cover wharf and handling during the war emergency period when neither they nor their agents supplied the wharfage or handling which have been and are being supplied by the Army on the traffic here involved.

571 I think it is most important to bear in mind that this proceeding does not involve a peace-time situation but a war emergency one, and that is stated as page 46 of the Northern Carriers' petition for re-opening. I quote:

"With the diminished flow of Army traffic and with the likelihood that the piers will soon be turned back into private operation, the issue is clearly reparation."

Now, on water borne traffic moving through the Port of Norfolk from and to the territories here involved, the carriers published single-factor shipside rates which under the tariffs on most commodities specifically include wharfage of one cent and handling of three cents per one hundred pounds, and I might emphasize that word, "specifically." That statement is fully borne out by statements appearing on pages 34 and 35 of the Northern Carriers' petition, and at page 34 they reproduce the Pennsylvania Railroad's tariff provision with respect to terminal services.

That tariff states that on traffic that pays the freight rate of not less than 10c per one hundred pounds, or \$2 per ton, wharfage charge of 1c per one hundred pounds and handling charge not to exceed 3c per one hundred pounds, or 60c per ton, will be included in the freight rate to or from Norfolk. This means that the carriers hold themselves out to supply wharfage and handling all  
572 water borne traffic, with certain exceptions, not here involved, moving through the Port of Norfolk.

As Division 2 said in Terminal Charges of Pacific Courts, 255 ICC 673 at page 676:

"Carriers are obligated to perform or to make allowances for all services necessary to give effect to their published rates."

Now, after the present war broke out the Army set up the Port of Hampton Roads Port of Embarkation and took over Army bases 1 and 2 which had been constructed during the 1917-1918 war, and when completed had been leased to public pier operators, that is, agents of the carriers, as one of the principal facilities used by the carriers in their holding out referred to.

The carriers contend that "the operation of the piers had to be an Army operation and not a civilian one," and for that defendants are required to pay an allowance for a service which was not furnished."

In his proposed report the examiner stated that anything but Army operation is out of the question, and at sheet 9 in the report of Division 2, I quote:

"The record shows that the Army took over the piers only because of military necessity."

The Army was not a mere volunteer. It took over because of the war emergency and very definitely in the public interest.

Now, the carriers not even being in a position, as they claim, to supply wharfage and handling on complainant's traffic, they should have amended their tariffs at the time the Army took over the piers by eliminating the charges, that is, the 4¢ per one hundred pounds for such wharfage and handling from their single-factor, shipside rates on the traffic moving over Army bases 1 and 2.

The tariffs not having been amended, the Commission should find that complainant is entitled to reparation in the amount of the wharfage and handling charges in the amount of 4¢ per one hundred pounds on all shipments that have moved over the Army base piers since the Army took over and on those that move up to the time that the tariffs are amended to provide that on shipments moving over said piers from and to the involved territories, 4¢ per one hundred pounds covering wharfage and handling shall be deducted from the shipside rates and paid to the government by way of an allowance.

Commr. ARCHISON. When the government took these piers over, was it for a definite period?

Mr. BROOKS. Not so far as I know. I don't believe the record so states, but the natural assumption would be that they took them over for the period of the emergency.

Commr. ARCHISON. For which it might possibly have terminated the next day. The point of my question is, was it sufficient to put carriers on notice that they ought to change their tariffs? Of course, if it was a mere casual or temporary taking they would not probably be under that obligation.

Mr. BROOKS. I don't know as to that, your Honor. The record, I believe, is silent with respect to the negotiations that might have taken place prior to the Army's taking over.

Commr. ARCHISON. No, that is not the point. The point is whether or not what the Army did when it took over was



sufficient to put the carriers on notice, according to your theory, to change their tariffs.

Mr. Brooks. Yes, Yes, sir. They had previously provided that export rates, for example, would apply through Army and Navy bases and that when the Army did take over and the Army base piers 1 and 2 became an Army base, then at that time the carriers should have amended their tariffs to provide for the situation because the Army rather than the carriers would perform—probably perform the wharfage and handling at the Army base.

Commr. AITCHISON. They could not do it short of thirty days.

Mr. Brooks. Well, they no doubt knew in advance of the Army's taking over that the Army was going to take over and the Commission probably would have given them short notice permission.

Commr. AITCHISON. Well, you are piling assumptions on assumptions, aren't you, Mr. Brooks?

Mr. Brooks. I don't think so, your Honor.

Commr. AITCHISON. Well, supposing a Second Lieutenant had showed up there with a squad and said, "I am taking this dock over." What would have been the duty of the carrier in regard to changing its tariff?

Mr. Brooks. Well, that apparently did not happen. The Hampton Roads Port of Embarkation had been no doubt notified of this, and there was a great volume of goods coming in there.

Commr. AITCHISON. Can we make findings of reparation to award damages on the basis of assumptions as to facts?

Mr. Brooks. Not necessarily, your Honor. They had already provided that the rates would apply through Army bases and it would be up to the carriers then to take care of the terminal service there, the wharfage and handling, either through their own agent or by giving an allowance to the government.

Now, prior to the time the Army took over, the carriers had paid an agent, a public terminal operator, 4c per one hundred pounds for supplying the wharfage and handling at the Army base piers. In fact, that is a general practice at Norfolk according to the record.

Since then the Army has been handling the wharfage and handling and the carriers have kept the 4c. That is important. They have kept that 4c and have rendered no service for it, in spite of their inability to supply the wharfage and handling in accordance with their own claim

and in accordance with the war needs. If more volume came over the piers, more wharfage and handling revenues and no work at all by the carriers, it is clearly a case of unjust enrichment.

Now, the findings that I have just suggested would be in full accord with the principles laid down by the United States Supreme Court, and the Commission would do full justice to all interested parties, would discriminate against no one, and would give rise to no legitimate claims from private pier operators who handled their own private property over such piers unless the carriers do not have adequate facilities and services available for the handling of such property. The carriers would be paid in full for the services actually performed by them. The government would not in fact be paying twice for wharfage and handling as it has been doing.

Now, Mr. MacGuineas has already mentioned the attitude of the Norfolk and Western and the Virginian. I don't believe he mentioned that the C&O had an arrangement with the government whereby the government took the C&O piers at Newport News and the C&O paid the government an allowance of 50 cents a ton for handling and C&O also furnishing the wharfage facilities, and the Newport News rates, of course, are on a parity with those of Norfolk and most of the period here involved except the short-haul territory.

I want to reserve part of my time, which is quite limited, for rebuttal, but I do want to refer briefly to the case of Wharfage Charges at Atlantic and Gulf ports, 157 ICC 663. That case involves the question as to whether or not the charges for terminal services at the port should be separated from the line-haul charges. The Commission found that they should not. It found that the rail-water terminal facilities are now shown to be insufficient or inadequate. That is important. But, on the contrary, existing facilities are shown, on the whole, to be reasonably adequate to meet normal traffic needs.

I have reached the conclusion that there was no substantial evidence tending to establish any injury wrought by the long-existing practice of publishing single-factor rates to cover the entire transportation service from point of origin of the freight to shipside.

At page 685 in answer to the question "whether a rail carrier may be required to turn traffic over to a municipal or private competing facility at a port and absorb the port charges of the facility to which the

traffic is delivered when the railroad itself has provided facilities to accommodate the traffic is the question here presented," in answer to that the Commission has said:

"A carrier has the right to itself perform any transportation service which it may lawfully be required to perform. Railroads may make such rules, regulations, and practices as will lawfully reserve traffic to their own rails and facilities."

There is no objection to their restricting traffic to certain piers. The decision was a six-to-five-one. If the vote had been six-to-five the other way, this case would not have been brought, as there would be a separation of the terminal charges from the line-haul rates and government would not be paying for the wharfage and handling which it supplies.

Now, the carriers serving Norfolk are admittedly not in a position to supply wharfage and handling such as they are necessary during a period of war emergency and such as have been performed by the Army and the Army base piers. The Army alone was in a position to adequately perform such services. This is not a case where the carriers have supplied adequate facilities and services and the shipper is not using them. Complainant is without question entitled to reparation in full and relief for the future.

COMMR. PORTER. Well, I just don't get what is your difference with Division 4, Mr. Brooks.

MR. BROOKS. With Division 2?

COMMR. PORTER. Pardon me, I mean Division 2.

MR. BROOKS. Well, their approach is a little different. They reached their conclusion, as I understand it, on the fact that the carriers after July 1, 1943, should have served. I say that as long as the carriers claim that they could not have served in the manner that the Army wanted or in such a manner as the war emergency required, that, all right, we will not ask them to serve but because their tariffs hold out that they will perform wharfage and handling and the Commission said, "You may perform wharfage and handling provided your services and facilities are adequate," here as I see it their facilities and services are not adequate; the Army had to perform and, therefore, the railroads are not entitled to keep the 4 cents that was in their line-haul rates—or single-factor rates, rather, to cover wharfage and handling.

I reserve the balance of my time.

Chairman BARNARD. Mr. Cousins.



## ARGUMENT OF WINDSOR F. COUSINS

Mr. COUSINS. May it please the Commission, I speak for the Virginia Railway as well as the other port lines and, therefore, Mr. Reynolds and I between us represent all of the railroads serving Norfolk except two—the Chesapeake and Ohio, which does not serve the Army base and thus is not involved in this case, and the Norfolk and Western, which, as you have been informed, has paid up. We represent all the other Norfolk Lines, and in addition I represent all of the port lines serving ports from Norfolk to New York, inclusive, all of whom are interested in the principles involved in this case.

Now, if the Commission will permit me to take a few minutes to explain the background of this situation; I think I will be able to dispose of the legal questions, the issues, very shortly. In this case the Army seeks an allowance on all export freight handled over certain piers at Norfolk since June 15, 1942. The allowance sought is 4 cents per hundred pounds, which consist of two parts, three cents for unloading the cars and one cent for wharfage, which means in this case the use of the pier or furnishing the pier.

Now, it has been the custom for railroads to unload certain types of exports, imports, coastwise, and inter-coastal freight; the several classes of what we generally call waterborne freight, and North Atlantic piers within definite limitations. The railroads perform the unloading and pay no allowances to shippers. The privilege is restricted to certain types of piers, the principal class being railroad piers.

Now, that is the situation at Baltimore where the service is performed only on railroad piers, and during the war the Army's export freight had been unloaded by the railroads at Baltimore on railroad piers. At other ports, public piers, that is, piers operated by municipalities or public wharfingers, are included in the tariffs along with the railroad piers, and that is the situation at Philadelphia.

During the war, Army freight has been unloaded on a large public pier by the railroads at Philadelphia, and the situation is similar at the other ports, New York, Newark, New Jersey, Trenton—which does not amount to much, of course—Camden, New Jersey, Wilmington, Delaware, and Baltimore. In no case do the railroads unload freight passing over private piers, that is, piers owned or operated by shippers for handling their own traffic, and there are many of such piers and large quantities of freight passing

over them. They do not receive the unloading service and never have and, as I said, no allowances in any event. Even on public piers, if freight passes into the custody of the shipper, to-wit, leased space, which is not unusual, the privilege is not accorded.

We have during the past two years that I know  
581 about been very careful about that. My predecessor,

Mr. Bickley, used to tell us to mark the line where there was least space, and I have handled this problem since his time, and we have always thought that the law was that freight coming into the custody of the shipper at the port was not entitled to this privilege.

Now, the various limitations have been reviewed by the Commission in at least a half dozen cases, and in every case they have been approved, and in one case against my argument they have been required.

Chairman BARNARD. I am bothered a lot about this 4-cent business. What is your position as to your arrival at that 4 cents? That the tariff specifies that that covers certain handling of this stuff? The arguments being made are that it is an unjust enrichment.

Mr. COUSINS. I understand, Mr. Chairman.

Chairman BARNARD. I wish you would straighten me out on that.

Mr. COUSINS. I will. I would like to reserve the detail of that for a little later, but I will say at this time that the record shows beyond any question of a doubt that the export rates contain no factor to cover that 4 cents. The export rates apply whether or not the service is granted or the 4 cents pay on large quantities of traffic.

582 Furthermore, the unloading privilege, as I want to show more in detail, has never been accorded at all export or import freight but only that part of it which meets certain qualifications.

Chairman BARNARD. Well, what does the tariff say this 4 cents covers? If the tariff says that it covers these things that are contended for by the government and it is retained by the carrier, why—

Mr. COUSINS. The tariff says at Norfolk that that is the amount of compensation. It erroneously called it an allowance, we think. I define an allowance as something paid to a shipper out of a rate. The tariff says at Norfolk we will pay our agent 4 cents to cover unloading service and furnishing the wharf in our behalf.

Now, that is an important point in this case, and I do not want to get too far into it until I have explained the entire background, but I am going to cover that.

"I think Division 2 has erroneously interpreted the tariff and given them an interpretation that nobody supposed was intended, but I would like to get on for just a moment because I have not yet explained what we do at Norfolk, and that is my next point.

Now, at Norfolk, the railroads with few exceptions, have not operated their own piers but have made use of public piers and have designated the terminal operators or 582A public wharfingers as their agents to perform certain railroad services. Thus, for about 20 years this Army base, like half a dozen other facilities at Norfolk, was leased from the government and operated by public wharfingers who offered the usual services to shippers in connection with trans-shipment between railroad car and vessels. The railroads severally entered into agency arrangements with the terminal operators to perform services on their behalf, and to the operator they paid the four cents. In their tariffs, the railroads did not hold specifically to provide any wharf or unload freight but, rather, they stated that they would absorb the charges of the terminal operator, their agent, in amounts not exceed 3 cents for unloading and 1 cent for wharfage.

In substance, the practice at Norfolk has been identical with that at the other North Atlantic ports. There are these differences:

At the other ports we perform a service ourselves and say nothing about any limitations on cost. No matter what it costs we unload and pay our unloaders whatever the going labor rate is. We do not at other North Atlantic ports pay the terminal operator anything for the use of the wharf or make any allowance to anybody for the use of the wharf. We only furnish wharfage at the other North Atlantic ports to the extent that we happen to have 583 railroad piers. That is not at all true at some ports like Camden and Wilmington, and it is true to some extent at other ports like Philadelphia and Newark.

Now, at Norfolk we put a 3 cent ceiling on the unloading costs that we would absorb, and we added one cent for the use of the pier. There is that slight difference.

Chairman BARNARD. Well, do you in the tariff—and I am going to insist that I have an answer to this—do you in your tariff break down this line-haul rate and add this 4 cents or what do you call it in the tariff?

Mr. COUSINS. Well, I will read you the tariff.

Chairman BARNARD. Yes, please.

Mr. COUSINS. The Army base at Norfolk is served by the belt line railroad, which is a little switching line owned



by all of the other Norfolk lines, and it performs the switching in our behalf. The trunk lines, all of them, refer to the piers where they will perform this service through their agents, and the last reference in the tariff which touches upon the Army base is under the heading of "Transport, Trading and Terminal Corporation," which was the public wharfinger and railroad agent which was dispossessed by the Army on June 15, 1942.

Now, the tariffs of the trunk lines all refer to that agency, and then they speak about the charges of the Norfolk and Portsmouth belt line which they say will 583A be added to the rates at this pier with respect to export, import, and so forth, traffic where the wharfage charge of 1 cent and handling charge not to exceed 3 cents per hundred pounds will be included in the freight rate to and from Norfolk. Now, that is a Pennsylvania tariff.

Now, here is a Virginia tariff.

Chairman BARNARD. If that is included in the freight rate, there is 4 cents that is going out for something.

Mr. COUSINS. That is right.

Chairman BARNARD. And you are not doing it?

Mr. COUSINS. That is right.

Chairman BARNARD. And you are retaining the 4 cents.

Mr. COUSINS. That is right, and we have for 50 years, and we expect to for the next 50 years.

Chairman BARNARD. If somebody does not interfere with you.

Mr. COUSINS. If we can get rid of this report of Division 2, and I will explain why. It is nothing extra. It is exactly what the Commission told us to could do.

Chairman BARNARD. But the tariff says it is.

Mr. COUSINS. But you overlooked the limitations, Mr. Chairman. We only do it on public piers designated in the tariff and we only do it in respect to certain traffic, all as outlined. The government's traffic does not meet the conditions.

584 We say in our tariffs that we will charge certain export rates too which are lower than domestic rates, but the shipper who may ship his freight to the same port in Norfolk does not get the benefit of export rate, upon which the rates are based. Here is what the Virginian tariff says.

Chairman BARNARD. Now, await a minute. I understand that you do not attempt to do this at any public pier; is that right?

Mr. COUSINS. We do it at public piers.

Chairman BARNARD. I mean you do it at public piers but not at any privately owned piers?

Mr. COUSINS. That is right; not for any shipper controlling his own freight. That is the difference. Now here is what we did prior to the time the Army took over the piers. For the 22 years more or less during which time the piers were in the hands of public wharfingers, railroad agents, the belt line delivered traffic direct to the piers as the agent of the trunk line railroads, that is to say, it took them down through this base line proper, as was recited this morning, and placed them right out on the pier where they could be unloaded.

Now, occasionally the terminal operator performed some of that switching himself, but he was our agent. He did not charge anybody for doing that except to the extent we paid him. He acted for us. Under the arrangement the  
585 freight was at all times under the custody of the railroad until delivered to vessel. There was no interference of the shipper. The so-called allowances to the terminal operator were in effect payments of a legal service to the railroad agency.

Now, the significance of that operation was that railroad delivery was accomplished at shipside after unloading of cars. The railroad's custody of the freight continued and the integrity of the export character of the freight was maintained.

Now, after the Army took over in June, 1942, and after it had dispossessed our agent, the increased volume of Army freight was handled in a different manner. Interchange tracks were established within the base enclosure about two miles back from the piers near the railroad entrance. No cars were delivered to the Army base by the belt line until ordered by the Army. They were all classified out in the yardway of the railroads. They were switched to the base only as ordered by the Army, and there they were placed on designated interchange tracks as directed by the Army, all of that being two miles back from the piers in the Army enclosure. From then on the railroads had nothing to do with the freight except in an incidental manner, which I will mention in a moment. The Army dis-  
586 posed of the freight in its own way at its own convenience. It switched the cars itself on back to the piers or to storage or hold tracks.

COMM. MILLER. Well, you claim then that you lost possession of the freight?

Mr. COUSINS. We certainly did, Mr. Commissioner, and it was not even subject to export rates, except for the fact that the railroads of the country made a special concession to the government at the request of the Secretaries of the Army and Navy, making applicable export rates to the Army and Navy bases. They did that with respect to only export rates, not coastwise or inter-coastal, and the Army is not entitled yet to the classification of this freight at this port, although Division 2 makes its findings with respect to all those classes and not in respect to export freight.

Now, the significance after the Army took over was that shipments were accomplished by the exchange of freight over interchange tracks as and when ordered, and there could not be any doubt that the railroads were permitted to perform subsequent shipping within the Army base even if they had been called upon to do so, which they weren't, and even if they had been able to do so without interference, which they would not have been, except that rebates to the government are not illegal. The railroads were not called upon to do the switching, and the  
587 subsequent unloading service after the switching is one step further removed.

COMMR. MAHAFFIE. How did the Army do this switching? Did it have its own equipment or employ the belt line equipment?

Mr. COUSINS. No. I said that there was one exception in what we did on the pier. When the Army took over the belt line had a little switching locomotive on that pier which is left there, and it furnished that locomotive to the Army with two crews per day. Then the Army had its own switching locomotive on the pier which worked seven to nine crews per day. Therefore, the railroads furnished about one-fifth of the switching on that pier. All of it was under the direction of Army yard masters; none of it under the direction of the railroad, and I think that as Examiner Disque found, that it can be regarded only as a contribution to the government, the furnishing of that locomotive, a contribution that would not be legal to the ordinary shipper but is all right in the case of the Army.

COMMR. MILLER. You made no charge for it?

Mr. COUSINS. Sir?

COMMR. MILLER. You made no charge for that locomotive?

Mr. COUSINS. We made no charge?

COMMR. MILLER. I asked you, did you?



Mr. COUSINS. We contributed that, sir, and that was about one-fifth of the service which the Army needed. 588 When the Army took over the piers in 1942, it announced that they would be operated for its exclusive use and that it would perform all the services. Its announcements are contained in the record, Exhibit 1, offered by the complainant. The only demands made on the railroads were for an allowance, not for the performance of any service either on wharfage or handling. This demand for an allowance continued for a full year lacking three weeks, with much correspondence. Then a demand for unloading service was made on the Pennsylvania Railroad, in the words of the Commandant, as a prerequisite to filing a complaint with the Commission. Examiner Disque turned that a gesture. The formal complaint filed in the case prays only for allowances and asks for no performance of service, although Division 2 makes a statement to the contrary.

Chairman BARNARD. Well, you did not offer to perform the service; did you?

Mr. COUSINS. Of course not.

Chairman BARNARD. You did not think you had to?

Mr. BARNARD. Exactly so, and we could not have in any event. Now, that is my next point.

The testimony of complainant's witnesses, my friend, General Kilpatrick, who is probably watching Barnum and Bailey's circus today because he has returned to Madison

589 Square Garden from whence he came—General Kilpatrick, the Commandant, and apparently a very fine type of man and honest and forthright witness who answered my questions to the discomfiture of my opponents—his testimony makes clear that the railroads could not possibly have performed the unloading of cars within any reasonable standards, and Examiner Disque so found.

Now, this point will be covered more fully by Mr. Reynolds, so I only want to mention three admissions of the General.

One. That the railroads would have been obliged to use troops. Of course, he used not only troops but prisoners of war.

Two. That they could not have performed it at their own convenience.

Three. That they would have been obliged to pool their services; that is, all eight of them worked together through an agent or somehow not come in and perform their obligations severally.

Now, in several recent terminal switching cases, you said that pooling of services does not meet the test. If railroads cannot do it alone, they may not be permitted to do it together to ease up the situation. The record is clear that the Army never expected the railroads to unload cars. If this had been considered practicable the Army would have left the facility in the control of the terminal operator and thereby it would have secured the advantages that it seeks in this case.

I have already mentioned that when they took over the pier the export and other water-borne rates became applicable and a concession was necessary to make them applicable to this freight. Since the war ended, the railroads have expanded—and quoting from Section 22—“to include freight which reached the ports intended for export, whether exported or not.”

Chairman BARNARD. Well, your position, as I understand, is that this 4 cents does not apply to this government traffic?

Mr. COUSINS. That is right, or to the traffic of any shipper—

Chairman BARNARD. And a majority of Division 2 misinterpreted that provision in the tariff when it applied it to this handling of this stuff on the piers?

Mr. COUSINS. That is correct.

Chairman BARNARD. That is your position, isn't it?

Mr. COUSINS. Yes, that is part of my position, I agree with that, sir.

Now, let me discuss the issues briefly. There are a half dozen of them. I have come to that point. In the first place is the unreasonableness of rates. That was the theory upon which General Kilpatrick made his demands on the

Army. He said, just as Mr. Brooks now says, that the railroads should make restitution because they charged for service not rendered but provided for in the line-haul rates, that the line-haul rates were built up on the basis of the added service. Now, the majority of Division 2, which decided this case against us—was not able to find that rates were unreasonable. Neither did the examiner. So I don't want to take much time discussing that point.

The evidence is wholly one-sided in favor of the railroads and proves without doubt that rates were not unreasonable. Just stating our reasons as quoted by the record for my contention that there can be no finding of unreasonableness of rates, the records show that the line-haul rates contained

no factor for this service. Nothing was ever added. The port lines bear the entire cost, not their connections.

The export rates, as you know, are based on domestic rates. At Baltimore most of the export rates and domestic rates are the same. We started, and after the Commission decided the Eastern Class Rate case and applied the export rates on the Baltimore basis, of course there was nothing in the domestic rates that you prescribed to cover unloading cars and neither was there any identical—I should have said that there was nothing in the domestic rates

when you prescribed them for the unloading or  
592 wharfage and, of course, when we applied the domestic rates there was no basis for them there. Many commodities move and always have moved on export rates without getting this service, lumber, heavy and bulky articles, tank car commodities, open car commodities—all of them take the same export rates but they do not get this free unloading. The privileges, as I have said, are held out only on public piers. All the export traffic passing over private piers does not get this service.

Finally, the Norfolk Export rates are depressed in any event. They are the same as the Baltimore rates, although the domestic rates to Norfolk are substantially higher and distances are substantially greater, but Norfolk equalizes its export rates with Baltimore, and it so happens that at the sixth class level they are just about 4 cents under what they should be.

Now, Division 2 found that the practice of the railway was an unreasonable practice, not unreasonable rates but an unreasonable practice for the railroads not to furnish this service that had formerly been covered by the 4 cents. That must mean that it was unreasonable for the railroads not to supply a wharf after the government seized their facility and put their agents off. There is no reason indicated under this section for the award of more than one  
593 fourth of the reparation here other than that the railroad should have supplied a wharf which, of course, was not demanded. The wharf that was operating was adequate, but the government took it over.

Of course, all the government wanted was an allowance. Now, the railroads don't have any obligation whatever to provide wharves and never have. The common law does not place any such obligation on them, the Interstate Commerce Act places no such obligation on them, our tariffs undertake no such obligation. The only obligation we have is that con-



tained under the Act to provide a connection to a wharf within reasonable circumstances, exactly the same way as we have to provide a connection to an industry switch track. We had no obligation to perform a wharfage service.

Now, the Division holds that it was an unreasonable factor just not to come and unload. I have already covered that as far as I intend to. Mr. Reynolds will go further. The point there, of course, that we were never expected to unload by the Army. Anyway, they took it over themselves or our agent would have gone ahead and unloaded and we certainly could not have done the job within those applicable standards.

Now, Division 2 found that our tariffs which refer to this absorption of 4 cents payments to our agent and all, and that mentioned the facilities specifically where we will perform the work—Division 2 held that those tariffs do not mean that we will pay so much compensation to designated public wharfingers as our agents but mean that we will pay allowances on those piers mentioned, that is, that the Transport, Trading and Terminal Company's pier—that was our agent before the Army took over; that the Army base continued to be known as the Transport, Trading and Terminal Company after the Army took over and the 4 cents absorptions continued to apply.

Now, let me read what the belt lines tariff says, and this is the tariff that the trunk lines all refer to, and it covers either the charges or the obstructions, and I may as well admit in passing that the tariffs at Norfolk are somewhat loosely drawn. They are not perfect by any means. The tariffs of the different companies differ and they are not what they should be, but they have never been misunderstood. No shipper during all this time has tried to make a shipment, so far as we know, to the Transport, Trading and Terminal Company while the Army had the pier and get his freight unloaded by that company at our expense. Of course, he could not do it because you have to make your arrangements first. The Army was misled because they came to us and asked us to change the tariffs. They did not assume that the tariffs continued to apply to their traffic. They asked for a tariff change which we declined.

Here is what the belt line tariff says:

"For the use of wharves, warehouses, slips, channels, tracks, and approaches and other facilities at the Lincoln Tidewater Terminals, Incorporated, and/or Transport,

Trading and Terminal Corporation, Norfolk, Virginia, and for other services rendered by the Lincoln Tidewater Terminals, Incorporated, and for Transport, Trading and Terminal Corporation as agent for Norfolk and Portsmouth Belt Line Railroad Company, the Norfolk and Portsmouth Belt Line Railroad makes an allowance, equal in the amount of charges provided in this tariff, or as amended, \* \* \* except \* \* \*

We are not concerned with the exceptions. Now, how that tariff can be interpreted as granting an allowance to the Army for handling its own goods is inexplicable to me.

Now, there is a Section 2 finding against us. The Section 2 finding means that while we did not pay the Army an allowance we continued to handle like traffic of other shippers under similar circumstances and unloaded it for them. Now, my answer to that is that we did not pay any allowance to any other shipper at Norfolk. We would unload export freight of other shippers if they had any during the war over designated public piers. We did not do it for any shipper if he intervened and took control of his traffic the way the Army did. If a private shipper had been

596 operating this pier, the Army base, he would not even have received the export rates, let alone this additional service. It would have been clearly a rebate to do that for any shipper, and yet what Division 2 says about the applicability of the tariffs applies just as well to any private shipper like the United States Steel Company who might have taken over the pier, as it does to the United States Army.

Now, I will just say a word about the cases that have been decided here before. There is a whole series of them. I participated in most of them. I have not any time to discuss them, but I will say that right down the line the practices which I have attempted to describe this morning have been upheld in almost all cases, and required against our own effort to avoid the rule in one case.

Now, Division 2 relies upon its own opinion in a Boston case in which the New Haven Railroad has tried to withdraw a terminal facility from its tariffs on the theory that the Army traffic moving over that pier had so predominated it that it had ceased to be a public commercial pier and that therefore it should no longer hold it out in such tariffs.

Division 2 suspended the tariffs and declined to permit the withdrawal of that as a station facility, but the result of the case was exactly opposite to what we have here.

597 The Division held that the pier had not lost its character as a public commercial pier; that the railroads should be required to continue to unload commercial freight, not government freight, commercial freight, passing over the pier, and the report shows that the operation there was similar to the operation as it used to be in the Army base, that is, that the New Haven switches the cars right into the pier where it unloads them.

Now, it is difficult for me to interpret the opinion of Division 2. I cannot escape the conclusion that if anyone but the United States government had been the complainant in this case the result would have been different. The service sought would have been found to be beyond the railroad obligation. I think that is established in all the cases, the port cases, and all of your terminal switching cases. You would not have permitted any such service to be rendered or any allowance to be paid to a private shipper.

Commr. AITCHISON. Well, if this pier had been deeded or leased to a private shipper, you would have changed your tariffs, wouldn't you?

Mr. COUSINS. We would not have had to change our tariff, no, because our tariffs do not contain any holding out that this service will be provided on a private pier.

Commr. AITCHISON. I thought it named this pier.

598 Mr. COUSINS. It named the company, Transport, Trading and Transport Corporation, which operated as the pier, and wherever that corporation goes and operates a public pier, the tariff follows it.

Commr. AITCHISON. Well, assume that they had gone into private mercantile business.

Mr. COUSINS. We would not have had to change any tariffs, no sir, and there would have been no unloading service granted and no compensation trade and we would have had no agent there. Now, if the Transport, Trading and Terminal Company gave up its status as a public wharfinger and began to ship freight of its own, handle its own freight, we would not have paid it the 4 cents compensation and the contracts so provide. The terminal operators get no compensation for handling their own freight if they have any.

Commr. AITCHISON. Well, wouldn't you have had to change your tariff?

Mr. COUSINS. No, I think not.

Commr. AITCHISON. Doesn't the tariff take precedence over your contract?



Mr. COUSINS. There is nothing in the tariff, in my opinion, that would have held out any railroad service on Army piers 1 and 2 if they had been operated by a shipper. The tariffs provide that service only while they are operated by the designated railroad agency.

Thank you very much.

599 Chairman BARNARD. Mr. Reynolds.

#### ARGUMENT OF CHARLES P. REYNOLDS

Mr. REYNOLDS. May it please the Commission, I am appearing on behalf of the Southern Carriers that serve the Port of Norfolk, Virginia.

In his dissenting opinion in this case, the Chairman of this Commission, after pointing out that the rates charged the complainant were not in excess of reasonable maximum rates, made this statement:

"Furnishing the wharf and handling the freight at the Army piers are not transportation, but merely facilities provided and work done by a shipper for himself on his own property and at his own convenience, before and after the transportation is performed. Defendants may not, therefore, be required to provide a wharf or handle the freight on the Army piers, and not being required to do, they are not compelled to pay an allowance in lieu thereof."

Now, in my argument I shall try to convince all of you that the Chairman was correct, as I am convinced that he was, and that the decision of Division 2 in this case compels the railroad to pay the government an allowance for services which are not a part of transportation.

Ever since the Commission's decision in Propriety of Operating Practices—Terminal Services, it has been settled that "where the carrier is prevented from performing at its ordinary operating convenience any further service, by the nature, desires, or disabilities of a plant" it is not obligated to perform such further services and that transportation ends when the cars are placed on designated interchange tracks.

Now, this is true, although the shipper might be entitled to the further service if that service could be performed at the operating convenience of the carrier. It follows from their holding in the Terminal Cases that if the carriers could not have loaded and unloaded the Army traffic at the Army base piers at their ordinary operating convenience, they were under no duty to do so and under no duty to make an allowance, and if they could not go on the

Army base piers and load and unload the cars, then they certainly were not obligated to make the Army an allowance for wharfage.

In those circumstances, the Wharves and piers must be considered as private facilities of the Army as, in fact, they were. Moreover, as Mr. Cousins has pointed out, neither the Interstate Commerce Act nor the common-law places any duty upon the railroads to furnish wharves and piers.

I want now to consider the evidence. First, the evidence showing that the Army neither expected nor intended the carriers to perform the services for which they are now seeking allowances and, second, the evidence showing that the carriers could not have performed these services at their ordinary operating convenience. The Army took possession of the Army base piers on June 15, 1942, thereby dispossessing the Transport, Trading and Terminal Corporation which had operated the piers as the agent of the carriers.

On August 17, 1942, the War Department advised one of the carriers as follows, and I quote:

"The Terminal properties will be operated and controlled by the War Department. Use of the facilities by the other armed forces or by private concerns will be by the express permission of the War Department.

"It is intended to use the terminal facilities for government traffic only. However, circumstances may require the handling of commercial freight and in either instance the War Department or its agency will perform all services."

I do not see how words could be much clearer than those in showing that the Army took the Army base for its own use, that it intended to perform all services itself there; that it neither expected nor intended to permit the railroads to do that.

Chairman BARNARD. Well, of course, their position is, "Yes," because you could not do it, but if they had to do it that they were entitled to be reimbursed for doing it by you because it was your obligation. Of course, that is their position, which I do not agree with.

Mr. REYNOLDS. Well, I think Mr. Cousins made it very clear, Mr. Chairman, that the carriers' tariffs do not impose upon them any obligation to perform the services under the circumstances here present. Now, after the Army began operating the piers it made several requests for an allowance, and it was not until the first of May in 1943 that

they asked the carriers to perform the service, and then the request for performance was made only as a prerequisite, in their own words, to the filing of a complaint with this Commission, and the complaint itself when it was filed on April 15, 1944, did not seek specifically to have this Commission require the carriers to perform the service. The relief sought by the complaint in addition to reparations was either an allowance or that the line-haul rates be reduced by 4 cents per one hundred pounds.

COMMR. SPLAWN. Did the carriers fail to perform any service here, Mr. Reynolds, as far as these export movements were concerned?

MR. REYNOLDS. No, No, sir.

COMMR. SPLAWN. This company that you say went out of the picture at the moment, was its name?

MR. REYNOLDS. Transport, Trading and Terminal Corporation.

603 COMMR. SPLAWN. Ordinarily the carriers through that corporation got these shipments through; is that correct?

MR. REYNOLDS. They got certain shipments through; yes, sir.

COMMR. SPLAWN. And the Army was substituted for that corporation?

MR. REYNOLDS. No, sir. The Army dispossessed that corporation and took the piers for its own convenience and for its own purposes.

COMMR. SPLAWN. Yet it did substitute itself for that corporation?

MR. REYNOLDS. Well, it dispossessed the corporation and it took possession of the piers.

COMMR. SPLAWN. It did what that corporation had been doing?

MR. REYNOLDS. No, sir. It did not. It did not do what the corporation was doing. It handled the traffic differently and as the necessities of the situation demanded and—

COMMR. PORTER. And it did not operate them as agents for the railroads as the company did that it dispossessed?

MR. REYNOLDS. It did not, sir.

COMMR. AITCHISON. And did it deal with the public itself?

604 MR. REYNOLDS. It permitted a few commercial shipments to pass over the pier, but General Kilpatrick testified that he had had some unfortunate experiences with commercial shipments and that he had restricted the use of the pier by commercial shipments, and I think



during the whole period covered up until the time of the hearing some 700 cars of commercial freight had moved over the pier, but those cars contained freight that would not be entitled to wharfage and handling.

Commr. SPLAWN. Well, as a matter of fact, this spotting of the cars by the roads was just the same, wasn't it? It was in the terminals and in the yards?

Mr. REYNOLDS. No, sir; it was entirely different. Mr. MacGuineas is mistaken in his statement that the belt line placed the cars on the piers. The superintendent of the belt line testified to the contrary, at page 201 of the transcript.

Commr. SPLAWN. Well, as I understood Mr. Cousins, the superintendent sometimes had—or was it someone else—sometimes he had one of you do the spotting instead of the belt line.

Mr. REYNOLDS. Well, I am going to cover that in a moment. I am going to talk about the operation of the pier and after the Army took over.

Commr. SPLAWN. Well, I just want to get it clear to see if I understand it. If I fell into an error, I want to  
605 correct it.

Mr. REYNOLDS. Well, I will cover that right now. The way the cars were handled was this:

The belt line ~~has an~~ assembly yard over in Brechter, which is across the river from the other base piers. It moved those cars from Brechter to the Army base piers at the orders of the Army. It placed the cars in a storage yard at the Army base on storage tracks designated by the Army.

Now, after those cars were placed on those tracks, they were moved to the piers or to the points in the base at the control and direction of the Army, with Army locomotives and Army crews, except, as Mr. Cousins stated, the belt line furnished one engine and two crews, but the one engine and two crews of the belt line were under Army direction and control.

Commr. SPLAWN. They were under the direction and control of that Army, which had been its engine in peacetime?

Mr. REYNOLDS. Well, the belt line owned the engine, but the crew of the one belt line engine was under the control and direction of the Army in moving the cars from the storage yards and to the piers and to other points in the Army base.

606 COMM. SPLAWN. Well, the storage yards were by reason of additional traffic, and there was no objection on the part of you or other lines to the use of the storage yards and to the way they were used; was there?

MR. REYNOLDS. Well, they were the Army's storage yards within the Army base. We had nothing to do with them except we put the cars in those yards on the tracks designated by the Army.

COMM. SPLAWN. Instead of on the belt line switches as you had done in peace time?

MR. REYNOLDS. Well, in peace time we had an agent who operated it.

COMM. SPLAWN. And this war time Army substituted itself for that agent and did what the agent had been doing?

MR. REYNOLDS. No, sir; I do not agree with that at all. The Army dispossessed our agent, if you want to use that term. He kicked him out, in other words, and the Army operated in a different manner.

COMM. SPLAWN. Well, I will not interrupt you further. I think it is obvious as to what I have in mind, and you can clear that up.

MR. REYNOLDS. Well, if I have not cleared it up, I would like very much to do so.

COMM. SPLAWN. I will read your brief again.

MR. REYNOLDS. Thank you.

607 Now, under well established principles, the freight was delivered to the Army when the cars were placed on the interchange track, and this being true the carriers were under no duty to go on the piers and unload the cars when the Army placed them there, and neither were they obligated to make the Army an allowance for wharfage.

Moreover, complainants' own evidence shows that the carriers should not have placed the cars on the piers or loaded and unloaded them at their convenience.

I want to deal now with that evidence, because I think it quite important and quite convincing that the railroads could not have performed the service at their convenience. Complainants' evidence establishes the following facts:

"First: The Army base could not have been operated under civilian direction. General Kilpatrick, the Commanding General there, testified:

"Q. In your opinion, why did the Army think it necessary to take over this pier instead of making use of the pier under the prior public operator?"

"A. That would not have been feasible at all, because the Army has to control the overall operation, the bringing of the cars in, the allocation of ships, and so forth. It has to be an Army operation. It cannot work under civilian direction, I do not think."

Second: The loading and unloading of the cars on the pier had to fit in with the operation of the base as a whole."

Asked "What is the difference between the operation of the pier now from what it was prior to 1942," General Kilpatrick replied:

"A. The government controls the priorities of loading and the type of loading, it controls the stevedores in how they work and when they work, when they work overtime, and when they work straight time. The car unloading has to fit in with the overall picture."

"A civilian organization should not handle the freight from the depot to the ship. That is supervision that the Army has to furnish and a coordination that the Army has to furnish."

"Third: The urgency of movement was paramount, convoy dates had to be met, and the supply of civilian labor was inadequate."

General Kilpatrick testified:

"There is not in this vicinity sufficient civilian labor, in my judgment, to do that job. It must be supplemented by Army labor, I mean to meet the peaks and the emergencies with which we are faced. We have a convoy deadline to meet and we have to work day and night."

"In other words," he said, "The urgency of the movement is paramount regardless of who does the work, whether it is soldiers or civilians or what. We have to keep our freight moving. We have to load our ships, and we have to meet our convoy dates."

"Fourth: The Army had difficulties which commercial interests do not have."

The General testified:

"With the big flow of freight coming in and with the uncertainty as to specific delivery dates, we have a difficulty which commercial interests don't have. We have to load bottom cargo first, then filler cargo, then on top of that blow-up cargo."

"As freight comes into the piers, we are sometimes in need of bottom cargo and have to hustle those cars in right down to the piers and work them, whereas other cargo



for that same ship or for the same cargo which is loaded later in the loading cycle may be in the port for several days."

It is obvious, I think, that the manner of loading the ships has a direct effect upon the unloading of the freight from the cars to the pier floor, the service for which the Army seeks an allowance.

The fifth point to which I want to direct your attention is that the Army unloaded the freight from the cars in its own peculiar way and to suit its own convenience. Sometimes freight was unloaded direct from the cars to the ships without touching the piers.

On this point, General Kilpatrick stated:

610 "At times the freight comes right out of the car and into the ship without ever touching the pier except to be carried across it in motion."

Sometimes freight was unloaded on the pier then reloaded into cars and taken back to the depot or placed on another pier.

The General testified:

"After we have brought freight into load on a ship, over seas will tell us they do not want flour or they do not want oil or gasoline, but want something else put in the space in the ship that we had intended to put this particular type of freight in; then it might remain on the pier for some days until another convey or until we had space to get rid of it, or ship it back to the depot; and also certain small quantities of freight might stay on the pier some days when they are shut out."

Sometimes ships are in process of loading and moved from the pier out into the stream to make room for other ships.

Emphasizing the necessity for Army control and supervision of the base, General Kilpatrick states that this control must include, and I quote:

611 "Everything, ships, cargo, and everything. Bear in mind we have embarkations and debarkations. We handle prisoners of war over these same piers at the same time. We even have to move a ship out into the stream that is loading cargo in order to load troops or to take off prisoners of war or retational troops."

Now, obviously the things I have mentioned in general affect the loading the unloading of the cars, particularly since the General himself testified that freight is handled directly from the car into the ship, and manifestly too, the railroads could not have performed that service at their ordinary operating convenience or in any other manner.

The sixth point to which I want to direct your attention is this:

It was not practical for the individual railroads to load and unload cars of freight on the Army base piers.

Asked, "Do you think it will be practicable for the various individual railroads to undertake to handle their own freight separately," General Kilpatrick stated:

"But that would be an almost impossible operating condition."

"Q. You have to have the whole operation under one supervision and control, do you not?"

"A. That is desirable."

Now, finally, General Kilpatrick testified that cars could not be handled by the railroads at their own convenience. His testimony was as follows:

"Q. Would it be a satisfactory operation if the railroad personnel should unload these cars at their convenience and in the way they, from an operating standpoint, wanted to do it?"

"A. No. They would have to unload them in such a way that we could keep our ships moving."

"Q. In other words, the unloading would have to be done according to your schedule to meet your need?"

"A. Yes."

"Q. And it could not be done at the railroad's convenience?"

"A. No."

COMM. ALLDREDGE. Mr. Reynolds, do you think—well, I assume you do and I would like to know why—do you think that the principles that are announced in these Terminal charges cases to which you refer would apply in a situation involving a transfer of freight from rail to shipside?

MR. REYNOLDS. Well, Mr. Commissioner, I cannot see any difference in principle between transferring freight from an Army base to shipside and placing freight within an industry.

COMM. ALLDREDGE. Well, you spoke of the railroads being able to do that work at their ordinary convenience.

MR. REYNOLDS. Ordinary operating convenience. Those are the Commission's words.

COMM. ALLDREDGE. Now, in the case of transfer from rail to ship it has got to be an adjustment of the conveniences of the ship and the rail; isn't it?

MR. REYNOLDS. Well, on that—

COMM. ALLDREDGE. You could not transfer unless the ship was there, and if for any reason the ship was delayed you would be delayed?

MR. REYNOLDS. That is right.

Commr. ALDBREDGE. And if for any reason the ship had to shift from one pier to another that would upset your adjustment; wouldn't it?

MR. REYNOLDS. Well, it might, but still the railroads would be in control of the situation. They could handle the freight at their convenience.

Commr. ALDBREDGE. Well, they would have to consider the convenience of the ship; wouldn't they? The ship operator?

MR. REYNOLDS. Well, certainly not to

Commr. ARCHIBUS. Would you have to do more than put it within the reach of their tackle, whether they have a tackle or not.

MR. REYNOLDS. That is all we have to do, is put it in reach of ship's tackle. If I may say just one word, and I will close, the Army here, according to their own counsel, are claiming allowances of the shipper. Now, we think that the Interstate Commerce Act and equity both require that all shippers be treated alike, the government included.

Commr. ALDBREDGE. That is something else. I was 614 not asking you about that.

MR. REYNOLDS. I did not mean to be answering your question. I was just concluding your argument. I thought I had answered it. At least, Commissioner Aitchison answered it for me when he said that all the railroads are required to do ordinarily is to place freight within reach of ship's tackle.

Commr. ALDBREDGE. Well, yes, ship's tackle. If it is not working?

MR. REYNOLDS. Well, that is not our funeral.

Commr. ALDBREDGE. It might get to the end of the pile and have to wait a while; mightn't it?

MR. REYNOLDS. Well, I think we could penalize the ship for that.

Well, the point I am making is this, and the point I want to leave with you is this:

That the government is here claiming as a shipper, according to its own counsel, and it should be treated as an ordinary shipper, and it seems to me too clear for any question that if it were the ordinary you would deny its claim for allowances, and I think you should do so here.

Thank you.

Commr. SPLAWN. Before you sit down, Mr. Reynolds, may I ask about the operation of that belt line? Did they send that engine back into your yards, to get the cars



615 or did they have yards of their own to which you delivered the cars before they touched them?

Mr. REYNOLDS. The belt line had a yard of its own in Breckler, Virginia, a suburb of Norfolk, several miles from the base and over on the other side of the river. That was the belt line's classification yard. Well, now, they moved cars through that yard on orders of the Army to a storage yard just inside of the base, and that yard inside of the base, the storage yard, was on base property and under control of the Army since the Army controlled the entire base.

Well, now after the cars got to the storage yard, they were placed on tracks designated by the Army, and then when the Army wanted those cars on piers or on different parts of the yard, it would use engines that operate inside of the base exclusively to move those cars from the storage yards either to the piers or to places in the yards where they wanted them.

Now, the belt line contributed one engine. The Army had three or four, but the belt line had one. It furnished two crews. It contributed that to the Army. The Army controlled the crews in how they worked and where they worked anyway, and they worked under the direction of the Army.

Commr. SPLAWN. Now, that yard to which you delivered cars, the belt line then came to that yard and got the  
616 cars, isn't that right?

Mr. REYNOLDS. I am sort of confused about which yard you have in mind, Mr. Commissioner.

Commr. SPLAWN. The one you spoke of first as being the yard of the belt line to which you delivered your cars.

Mr. REYNOLDS. Yes, sir. The belt line moves the cars from its classification yard with its own power and its own crew to the Army base and places them on the storage yards in the base on the tracks specified by the Army.

Commr. SPLAWN. That is where you delivered your cars, was to the belt line's own yard, that is, your lines, the lines of different roads?

Mr. REYNOLDS. A line haul carrier delivered its freight to the belt, either to its classification yard or at some point beyond its classification yard. The belt line moved the cars from its classification yard to the storage yard within the base.

Thank you.

Commr. ALDRIDGE. Mr. Reynolds, did you quote from the Commission's holdings in the Terminal Charges Cases with approval?

Mr. REYNOLDS. Yes, I did. I do not know whether that makes much difference, but I did.

Chairman BARNARD. Mr. Winn.

ARGUMENT OF ARTHUR L. WINN, JR.

617 Mr. WINN. May it please the Commission, I appear for the North Atlantic Ports, which were interveners in this proceeding and offered evidence. These North Atlantic Ports were represented by the following associations and agencies: Baltimore Association of Commerce, the Chamber of Commerce and Board of Trade of Philadelphia, Norfolk Ports Traffic Commission, the Port of New York Authority; the Richmond Chamber of Commerce, and the State Port Authority of Virginia.

The report of Division 2 described the position of the North Atlantic Ports as neutral. That is correct. These ports intervened and participated in this proceeding not because they wished to see the case decided in favor of the complainant or in favor of the defendants. They are both powerful and good friends. These ports have taken part in the case in order to safeguard the important port differential freight adjustment from disruption and to have the shipside rates continue to be published as one-factor rates as they have been for 50 years.

The issues presented by the complaint involved the possibility of a finding and an order under which shipside rates to and from Norfolk might be required to be published as line-haul rates and separately as terminal charges.

Now, these ports, the North Atlantic ports, are united on a common front in their view that any such finding or order would threaten disruption of the long-standing and very important port differential adjustment.

618 These ports unanimously opposed any such solution of the issues presented by this complaint. They filed a joint brief and opposition to the proposal, and they presented a joint oral argument before Division 2 against any separation of line-haul and terminal factors.

This separation between the line-haul and terminal charges I wish to put in a proper light.

It should be said that the government does not press or emphasize that issue. The issue is included in the complaint along with other prayers, apparently on the theory that it originally somehow strengthened the complaint. Actually the government introduced new evidence directed to this issue, and then the oral argument before Division 2 did not even mention it.

Now, this morning Mr. MacGuineas did mention it in a way that gratifies us. He mentioned it as saying that the government, because of the Commission's decision, the decision in the wharfage case, 157 ICC, that they appreciate the gravity and the seriousness of any separation in this highly competitive North Atlantic adjustment.

Now, any possibility of an order of this Commission requiring the separation of terminal and line-haul charges at one of the competitive North Atlantic Ports is of grave concern to each port and all of them, and they introduced in this case affirmative evidence showing the undesirability and harm of any such action. I should add that this evidence against separation is the only evidence in the case on that question.

The central issue in this proceeding is whether the defendant railroads have been discharged from their responsibility to make delivery at shipside at the Army bases at Norfolk. The government states that the railroads have such an obligation. Defendants say in substance that if they have such an obligation they have been discharged by the government's action in taking over control and operation of the piers.

The North Atlantic Ports are not concerned with that issue. We do not think your consideration should be beyond that issue. If you find that the defendant railroads have been discharged from their obligation to make shipside delivery, that disposes of the complaint and it should be dismissed.

On the other hand, if you find that the railroads have not been discharged, we feel that you should limit your findings and conclusions to the duty of the railroads to perform the work, either performing the work or paying an allowance in lieu thereof, leaving to the railroads, as you must under the law as I understand it, the election to substitute an allowance for doing the work.

Now, if this view of the law is correct it would seem that the Commission should never reach the issue of requiring a separate statement of terminal and line-haul charges. If the Commission must leave to the carriers the decision whether to perform the work themselves or pay an allowance themselves in lieu thereof, any further alternative to the paying of an allowance should, we believe, be left to them, and any requirement to separate the charges into line-haul factors and terminal factors is a further alternative to the payment of an allowance or the performing of the work, all within the discretion of the carrier.



The highly competitive character of the readjustment through the several North Atlantic Ports is well known. The port differential adjustment is based on one-factor rates which include both terminal and line-haul services and apply to terminal and shipside. The present port differential adjustment has resulted from decades of port and rail competition for more water-borne commerce, and it certainly should not be disturbed. It certainly should not be disturbed except upon the most careful consideration and based on an extensive record examining at length the results which would flow from any such change.

As I have said, the government offered no evidence on such issue, and the only evidence of the record bearing on this is the evidence introduced by the ports against it.

621 Mr. AITCHISON. Now, has that evidence shown as has been contended here today that the practice of making delivery applied only to railroad owned piers or to those owned by public wharfingers?

Mr. WYNN. No. It went beyond that, Mr. Commissioner. It left that to the railroads and the United States. Our evidence as to separation showed the line-haul rates between the various North Atlantic Ports, showed that the line-haul rates were below the domestic level, that they were on a comparative level with Baltimore, Baltimore being lower than New York. It showed that any reduction of the line-haul rates at Norfolk with any separate charges would give Norfolk a lower line-haul rate. The evidence also showed that if you had varying terminal charges at each of the North Atlantic ports you could never stabilize, hold within bounds, the competition of those North Atlantic ports, and you would have the terminal charges varying from port to port in a competitive struggle, and our conclusion was, and the expert evidence was that you could never again get stability in the North Atlantic ports until you reestablished one-factor rates.

Commr. AITCHISON. Now, were those one-factor rates applicable to private piers as well as those which are railroad owned or owned by wharfingers?

622 Mr. WYNN. The one-factor rates apply whether you take advantage of the railroad's offer to perform the service or whether you decline it and prefer to do it some other way. You have the same export rates applying.

Commr. AITCHISON. I should think this could be answered "yes" or "no."

Mr. WINN. Well, perhaps I do not understand it well enough to answer it that simply.

Commr. AITCHISON. Does your testimony show that the one-factor rates to these other ports customarily apply not alone to railroad owned piers or wharves owned by wharfingers but also to private facilities and piers?

Mr. WINN. The one-factor rates apply to all export traffic.

Commr. AITCHISON. Regardless of the character of the ownership?

Mr. WINN. Yes, regardless of the ownership and regardless whether you call on the carriers to perform all of the service that they are willing to render or whether you do not ask them to do it all.

Commr. AITCHISON. Well, I did not ask you anything about that.

Mr. WINN. All right, I will try again. The export one-factor rates apply on all export traffic which meets the requirement of the tariffs.

Commr. AITCHISON. As Judge Katy used to say 623 out in Council Bluffs, your answer is just as simple as the law of fixtures.

Mr. WINN. Any separation of terminal charges at Norfolk with corresponding reduction or changes in the line-haul rates would either give Norfolk an advantage in line-haul rates or, because of the competition of other ports, spread to the other North Atlantic Ports.

In either case the results would be to destroy the separate port differential adjustment. The separation would make it impossible to maintain a stability between the total ship-side charges as between the competitive ports. Each port would naturally seek to gain a competitive advantage by reducing its separately stated terminal charges. Should any port thus seek to obtain a competitive advantage, other ports would for self-protection be required to enter the competitive race by changes in their terminal charges or in their line-haul rates.

It is doubtful whether stability could be restored following such a competitive rate cutting until properly related one-factor rates were reestablished.

The port of Philadelphia, as well as the ports of Baltimore and New York, would consider any reduction in the present line-haul rates to Norfolk to be detrimental to them and unduly preferential of Norfolk; conversely, Norfolk would consider the addition of terminal charges to

624 the present line-haul rates to that port to subject  
 • Norfolk to prejudice.

COMM. AITCHISON. Well, I asked you whether or not these rates would apply to all three of these different kinds of facilities and you answered me saying they would apply wherever export rates applied. I will try again. Would the export rates apply when the delivery was made at a private wharf or pier?

MR. WINN. Mr. Commissioner—

COMM. AITCHISON. I am not talking about Norfolk or this case. I am talking about the ones that you have said had been disturbed.

MR. WINN. Well, Mr. Commissioner, I have just been saved. I just glanced at a rate expert and he tells me, yes, they would apply; they would apply.

COMM. ALLDREDGE. You mean the shipside rates would apply?

MR. WINN. Yes, they would apply.

COMM. ALLDREDGE. I mean shipside export rates. Would they apply?

MR. COUSINS. There is not any such thing, Mr. Commissioner.

MR. WINN. Mr. Commissioner, if you interpret the private handling—

COMM. ALLDREDGE. I do not understand what the answer was. You said, "There is not any such thing." No  
 625 such what?

MR. COUSINS. We do not publish anything called shipside export rates. We publish export rates.

COMM. ALLDREDGE. For shinside?

MR. COUSINS. No, we publish export rates, and if these services are granted they have got to be covered by special tariffs of the port lines. The export rates themselves do not carry any such service with them. You have got to get a port tariff published only by the port lines that says what they will slip in under the covered rates. It is a free service just as closely as you can come to a free service.

COMM. ALLDREDGE. You mean that your line-haul tariffs do not publish shipside rates? Is that what you mean?

MR. COUSINS. We do not use the word "shinside" ourselves.

COMM. ALLDREDGE. You do not use it at all?

MR. COUSINS. We say we will deliver within reach of ship's tackle in certain cases, if you mean that, yes.



COMM. ALLDREDGE. Is that a shipside rate, to use a common term?

MR. COUSINS. I think it is, yes.

COMM. ALLDREDGE. Well, now, to come back to the proposition, what I injected to ask, was if that kind of a rate would apply if the shipments were consigned to private terminals.

626 MR. COUSINS. The answer to that is "yes," if there is a direct interchange so that the railroad delivers direct to the vessel; "no" if the shipper intervenes and takes possession.

MR. WINN. The trick of it, Mr. Commissioner, is that if a private owner of goods takes possession of his property the railroad contract of transportation is terminated and you cannot thereafter ask a railroad to handle your shipments on up to the ship's tackle. If you have intervened as a shipper before that traffic gets to the ship's tackle, the railroads are through.

COMM. ALLDREDGE. Well, I hate to interfere, but I think I understand what Commr. Aitchison is trying to find out, and I am interested in it too. There is such a thing as a pier being operated by a private owner; isn't there?

MR. WINN. Yes, sir.

MR. ALLDREDGE. He does not have to own the freight that comes over it; does he?

MR. WINN. No. There are possibilities.

COMM. ALLDREDGE. Well, now, do those so-called shipside rates apply in the case of a privately owned and privately operated terminal?

MR. WINN. On freight not owned by such terminal operated?

COMM. ALLDREDGE. Yes.

627 MR. WINN. I must defer to the people who know the tariffs, Mr. Commissioner.

Chairman BARNARD. Your time is consumed.

MR. WINN. May I just call attention, with your indulgence, to the decision of this Commission in Wharfage Charges at Atlantic and Gulf Ports, 157 ICC 633, where you had under consideration a separation down in the southern ports. The Commission recognized that such an important question should not be decided in a case except where all of the ports were parties and where all of the ports had a chance to adduce evidence, and after you had done that, brought them all in, you decided against it.

Thank you kindly.

## REBUTTAL ARGUMENT OF DONALD B. MACGUINEAS

Mr. MACGUINEAS. I should like to point out to the Commission that our complaint very specifically brought to the attention of the carriers and the Commission our position that it was the refusal of the carriers to perform their obligation to handle this freight, moving under shipside rates of which we complained that they refused either to handle it or to pay us an allowance in lieu of handling it, and that has been our position throughout the case. We are entitled to one or the other. We have gotten neither. Division 2 has given us one.

Chairman BARNARD. The reason you did not get one was your own fault. You would not permit the service to be rendered, and you just got the other one; that is all.

Mr. MACGUINEAS. I think the finding of Division 2 to the contrary on that issue is well supported by the evidence.

I should like to refer a minute to the actual handling of traffic at these base piers, as to which I think there has been a good deal of confusion. The fact is—and I reiterate this very strongly—that the belt line handles cars from its yard onto the pier. It has done it since the Army took over and, to the best of my belief, it is doing it today, and it did that very same thing for the 20 years prior to the time when the Army took over. It is true that Army locomotives also move freight from the yards, the storage yards, back of the piers onto the piers, and that was pursuant to the arrangement about which I previously spoke.

When this pier was operated by the terminal operators, the evidence indicated that the terminal operator had an engine which it used to supplement the belt line engines in bringing the cars off of the piers so that the Army with respect to the bringing of cars on the piers has stepped into the shoes of the terminal operator, and under both private operation and under Army operation the belt line has always considered that its tariff obligation where they are handling shipside rate meant bringing the car out to the pier and unloading that car on the pier floor. As I stated before, anything else would be meaningless. You could not have a shipside rate unless it did that.

Commr. MILLER. Well, did the belt line ever take any cars out of the Army's storage tracks to the pier?

Mr. MACGUINEAS. Oh, yes.

COMM. MILLER. Or did it take it direct from its yards to the piers?

MR. MACGUINEAS. No. As I understand the evidence, all cars went from the belt line into the Army storage tracks back of the piers.

COMM. MILLER. Always?

MR. MACGUINEAS. That is my impression, but the belt line also used this engine, which the carriers have ingeniously described as a contribution, to bring those cars right onto the pier.

COMM. MILLER. I am not talking about that engine. I am talking about the belt line locomotives that took the cars from the belt line storage tracks to the Army tracks.

MR. MACGUINEAS. Well, I think it is probably so.

COMM. MILLER. Did they ever, then, take that same locomotive from the Army tracks to the piers?

MR. MACGUINEAS. Now, whether the same locomotive was used, I am not prepared to state, but a belt line locomotive, yes, sir.

639 COMM. MILLER. Not the one they donated, but any others?

MR. MACGUINEAS. Well, that is the one they used.

COMM. MILLER. Well, I am not talking about that. They gave that to the Army. I am talking about any of the others.

MR. MACGUINEAS. The point is they say they gave it, and we say they supplied it in recognition of their obligation to place those cars onto the piers as part of their shipside obligation.

COMM. MILLER. I am not asking that. Well, you knew what the question was.

MR. MACGUINEAS. Yes.

COMM. MILLER. Your answer was, as I understand it, that the belt line locomotives other than the one they donated did not take any cars from the Army storage to the pier?

MR. MACGUINEAS. I think the only testimony on that was that the man in the belt line testified to his knowledge he did not know at least of any instance of a direct movement from the Belt line classification yard onto the pier. That is the only testimony on that point. We produced a witness—

MR. COUSINS. He did not say anything about what he knew. He said, "No, they don't," on page 201.

CHAMAN BARNARD. Don't interrupt the gentleman in his argument.



631 Mr. MACGUINEAS. We produced a gentleman who had been in the export shipping business in the port of Norfolk for 20 years and he testified for the last 20 years that on this base pier in connection with his business every other week or so, at least every other month and he testified that the handling of those cars by the belt line to the pier was exactly the same under the period of Army operation as it had been for 20 years previously: that he himself had many times been held up getting onto the pier while he watched a belt line locomotive bringing those cars right onto the pier track.

Commr. PORTER. Well, but those orders were under the exclusive direction of the Army; weren't they? They were moved under the Army's orders; weren't they?

632 Mr. MACGUINEAS. Yes. The guard master so called was an Army employee. Obviously, when you are dealing with a facility of this sort whose function it is to change rail traffic to water traffic, you must have coordination in the handling of the traffic, both rail and water, and you effect that coordination through a yard master, but there is no indication that the yard master under Army operation handled anything any differently than the man who had handled that under the private operation for the Transport, Trading and Terminal Corporation. Let me make it clear that never once did the carriers complain that there was anything inconvenient about the way they brought their cars onto the pier tracks, so it seems to me that fact alone disposes of Mr. Reynolds' argument about convenience.

In so far as movement of the cars is concerned, the belt line did move the cars onto the track. We had no complaint as to that, and they have never indicated in the slightest that that was in any way inconvenient to them.

Commr. ALLEDREDGE. Was the belt line a defendant?

Mr. MACGUINEAS. That is correct.

Commr. ROGERS. The Norfolk and Western has already paid this?

Mr. MACGUINEAS. Yes.

Commr. ROGERS. How much was it?

Mr. MACGUINEAS. It was between \$850,000 and \$900,000 that the Norfolk and Western has already paid in.

Commr. SPLAWN. May I ask you a question that was not clear in my own mind that appeared from my question of Mr. Reynolds? These lines, did they perform any more service by reason of the Army taking over this belt line terminal activity, or was the service of the Virginian and these other lines just the same so far as pulling their cars into Norfolk were concerned as before the war?

Mr. MACGUINEAS. We say it was exactly the same. You are now considering movement of car as distinguished from unloading a car.

Commr. SPLAWN. Yes.

633 Mr. MACGUINEAS. As far as movement of car to pier is concerned, we say it is exactly the same under Army control as it was under Transport, Trading and Terminal Control.

Commr. PORTER. I am just wondering when the Norfolk and Western made that payment that you speak of \$850,000.

Mr. MACGUINEAS. They paid that in January, 1945.

Commr. PORTER. After all, the government made at least half of that; didn't they?

Mr. MACGUINEAS. I would not deny that there was in the minds of the Norfolk and Western a knowledge of the excess profits tax law. But may I point out that their obligations go beyond their 1945 obligations? It is accruing today, so that was not their sole motivation.

Commr. ALDREDGE. Have you read the decision of Division 3 in the Minnesota Transfer Case?

Mr. MACGUINEAS. No, I regret that I am not in a position, your Honor, to discuss that case now.

Commr. ALDREDGE. Well, it injects itself in the middle of this one, the holding does, holding in effect—I think it is up for reconsideration—that in a case somewhat like this where there was a belt line to perform the service the belt line was a common carrier, it was responsible for all the allowances, and so forth, and not the line-haul carrier.

Mr. MACGUINEAS. That brings me to a point which was not made clear by Mr. Cousins. He says that the 634 trunk lines do not publish a shipside tariff. Well, that is literally true. What they do is to publish a line-haul rate to Norfolk, but they also provide that they will absorb the charges of the terminal operator by reference to the terminal, that is to say, the belt line road tariff, so that in effect what the Pennsylvania and the other carriers say to a shipper is this:

“At these piers in Norfolk, the terminal operator charges you 1 cent per hundred pounds for wharfage and 3 cents per hundred pounds to unload your export freight. We, the line-haul carrier, will absorb those charges of 1 and 3 cents in the line-haul rates.”

They tell the shipper that he will get that service for the line-haul rate.

If there are no further questions, I have concluded.

## REBUTTAL ARGUMENT OF BENJAMIN J. BROOKS

Mr. BROOKS. In the argument advanced by the defendants, there are several points that I would like to hurriedly cover.

Chairman BARNARD. Yes, you will have to do it hurriedly.

Mr. BROOKS. Remember, Mr. Chairman, I am a friend of the Court in this matter.

Chairman BARNARD. Well, we make no difference whether you are a friend of the Court.

Mr. BROOKS. They state that export rates contain one factor to cover wharfage and handling, but they certainly knew when they established those export rates that wharfage and handling would be performed under those rates.

Now, they talk about a concession to the Army in permitting export rates to be applicable through Army bases. That was not a concession. That was done because of a war time necessity. They designated the Army bases and Navy bases as terminals through which the export traffic might move, and that was done before the Army took over its base, the piers at Norfolk, and when they did take over the tariff should have been amended to make an allowance to the carriers.

Now, on the question of unreasonableness of rates, the only evidence on that score was put in by the defendants, and they show that from Central Territory the export rates to Norfolk are the same as the export rates to Baltimore. Well, that is something that has been in effect for so these many years, even older than I am, my gray hair and all, and that is something that is voluntarily established.

The Commission, the Supreme Court, and all have held that one of the best tests for reasonableness of rates is rates that have been voluntarily established and maintained over a period of years.

Commr. AITCHISON. Did you speak yourself correctly when you said that the carriers ought to put a tariff in providing for an allowance to the carriers?

Mr. BROOKS. To the government, I should have said, your Honor.

Commr. MAHAFFIE. Mr. Brooks, wouldn't the government have a claim, on your theory, for this switching service that is furnished with these four engines that is furnished on this yard?

Mr. BROOKS. In my brief, your Honor, I think that they might very well come in and ask for an allowance for such service.



COMM. MAHAFFIE. Wouldn't that allowance have equal merit as the claim of unloading?

MR. BROOKS. I think so. I am not thoroughly conversant on that, but that thought did occur to me in my study of the case.

Now, on this question of private piers, you speak of no allowances to any other shipper and that the unloading is only over designated piers. Now, your Honors, in those questions of private piers, like the Weyerhaeuser case, you very specifically said that the railroad's pier facilities were adequate. That is the question here. The railroads are not in a position to adequately render the service so they are not then entitled to the wharfage and handling. You permitted them to continue in 157 ICC, in the Wharfage case, you permitted them to continue single-factor rates but with the understanding that they have adequate facilities.

CHAIRMAN BARNARD. This cause is submitted and taken under advisement and the Commission stands adjourned.

(Whereupon, at 12:20 p. m., the case was submitted and the Commission adjourned.)

BEFORE THE INTERSTATE COMMERCE COMMISSION

DOCKET NO. 29117

In the Matter of  
UNITED STATES OF AMERICA

vs.

ABERDEEN AND ROCKFISH R. R. Co., et al.

639 *Reporter's Transcript of Oral Argument.*

Hearing Room "B"

Interstate Commerce Commission Building  
Washington, D. C.

Wednesday, November 6, 1946

The above-entitled matter came on for oral argument before the Commission at 10:00 o'clock a. m.

PRESENT

Commissioner AITCHISON, (Chairman), LEE, MAHAFFIE, MILLER, SPLAWN, ROGERS, ALLDREDGE and PATTERSON.

APPEARANCES.

CHARLES P. REYNOLDS, 1110 Shoreham Building, Washington, D. C., appearing for Southern Cannerys, defendants.

ARTHUR L. WINN, JR., Investment Building, Washington, D. C., appearing for State Port Authority of Virginia, Rich-

mond Chamber of Commerce, Baltimore Chamber of Commerce, Chamber of Commerce and Board of Trade of Philadelphia, Norfolk Port Traffic Commission, Port of New York Authority.

BENJAMIN J. BROOKS, Cedar Lane, Sleepy Hollow, Falls Church, Virginia, appearing as *amicus curiae*.

WINDSOR F. COUSINS, 1740 Broad Street Station Building, Philadelphia, Pennsylvania, appearing for Defendants.

DONALD B. MACGUINEAS, Department of Justice, Washington, D. C., appearing for complainant.

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## PROCEEDINGS

Commr. AITCHISON. We shall now hear oral argument in the matter of United States of America versus the Aberdeen and Rockfish Railroad Company, *et al.*, docket No. 29117.

## ARGUMENT OF DONALD B. MACGUINEAS.

Mr. MACGUINEAS. May it please the Commission.

This case, as we see it, essentially involves a single issue as to whether the railroads which move traffic through the Port of Norfolk over the so-called Army base piers, are entitled to keep, out of their line haul rates, a factor of 4 cents per hundred pounds as the terminal charges for wharfage and handling on export and import traffic moving over the Army base piers. Although, since June 15, 1942, when the Army, because of the necessities of the war, took possession of the piers—

I say that although since that date, the carriers have refused to perform the wharfage and the handling services at those piers, at the present stage of the case, five members of the Commission have decided that the carriers may retain that money, that they need not perform the service and that they may charge the full line haul rate and that they need not pay the government any allowance for its performance of that service. Four members of the Commission held to the contrary.

641 I shall confine my argument this morning to a few of the specific propositions which are stated in the report of the Commission which seem to me clearly erroneous and which have been decisive in the decision of the Commission.

The first point I should like to mention is the question of the placement of the cars. Mr. Cousins has very astutely magnified that into a major issue in the case. As I see it, it is really not an issue in this case at all.

The Army has no complaint about the service which the carrier are and also have been rendering at the Army base piers with respect to placement of cars on the piers; and as far as the government has heard or the record in this case discloses, the railroads have never had any complaint about that.

The fact is that before the Army took over these piers when they were then operated by the "Transport Trading and Terminal Corporation", a public terminal operator, that it was the practice of the carriers, through the belt line, which is the carrier which serves the piers, to move cars into the Berkley yards of the Virginia Railway and then into the Army base, and at tracks which lie back of the piers themselves, to then use a switch engine to bring those cars on to the actual Army base piers along the tracks which run through the center of each pier.

That was the practice before the Army took over, and so testified to by the witness for the Belt line. That has been the practice since the Army took over, contrary to the impression which the Commission seems to have received.

642 The witness for the Belt line testified that the same switch engine which the Belt line now uses to bring the cars onto the pier was used by the Belt line for the same purpose before the Army took over the piers.

Commr. PATTERSON. What is the situation now with respect to the operation of the pier?

MR. MACGUINEAS. I have been informed by the Army and the Maritime Commission that the present status of the pier is the following. As of May 31st of this year, the Army declared these piers surplus. Half of each pier has been turned back to the administration of the "Maritime Commission". At the present time the Maritime Commission has an operating agreement with a private terminal operator called the "Hampton Roads Terminal Incorporated", by which that operator runs the piers for the account of the Maritime Commission.

The Maritime Commission has advertised for the lease of the piers to a terminal operator, and therefore may be said to be in process of putting the piers back into precisely the condition, or the mode of operation which prevailed before the Army took them over in 1942.

Commr. PATTERSON. Would the Maritime Commission at the present time permit the railroads to place the cars on the piers?



Mr. MACGUINEAS. I am unable to give the Commission specific information as to that. I have not attempted to re-try the case in any sense to bring into the record additional facts.

643 COMM. PATTERSON. Well, as a matter of information I would like to know what the present status is.

Mr. MACGUINEAS. I just am unable to state that because I have not been informed by the Commission.

I would assume, from the fact that the Army has released the piers, that no substantial amount of Army traffic is now moving over the piers, so that the issue is no longer one for future operation.

COMM. PATTERSON. Then it is just a question of reparations, now?

Mr. BROOKS. Pardon me, Mr. MacGuineas, if I may be pardoned for interrupting for just a half minute, I find—Brooks is my name. I will argue a little later. I find in supplement 84 to the Norfolk and Portsmouth Belt Line Railroad Company Tariff, ICC No. 105, effective July 3, 1946, that the Hampton Roads Terminals, Incorporated, has been substituted in the tariff for the Transport Trading and Terminal Corporation, so that, according to that tariff, since on the 3d of July, this new Corporation, Hampton Roads Terminal, Incorporated, had been functioning there as an agent of the railroads to handle traffic over the Army base piers.

COMM. PATTERSON. That would restore the status to what it was before the Army took over.

Mr. BROOKS. That is correct.

Mr. MACGUINEAS. That has been my assumption  
644 but I would not speak of that as a fact since it is not in the record and I have no personal knowledge of it.

If I may return a minute to this question of placing the cars:

As we see it, the railroads, with respect to placing the cars on the pier, have exactly the same obligations under the tariffs, under Army operation, as they had under "Transport Trading and Terminal" operation, and they have recognized that by performing exactly the same function; to wit, actually placing the cars with Belt Line Engines onto the piers.

Now, the Commission seems to have diverged from the facts, if I may put it that way, because of the arrangement which was made between the Commandant of the Army

base, and the carriers at the time the Commandant took over.

It will be recalled that there is a substantial volume of traffic moving over these base piers which does not move under the so-called ship-side rates. Now, as to that, of course, the Army has never contended that the carriers had any obligation to make a ship-side placement.

So as to that traffic, the Army has always recognized its obligation to move that traffic onto the piers.

Obviously, it was uneasible and uneconomical to have each car which comes to the Army base segregated with respect to handling onto the pier between the Belt Line and the Army, and to have the Belt Line handle only the ship-side cars and the Army handle the non-ship-side cars.

645 So, as a practical arrangement, the Belt Line and the Commandant said, "We'll just pool our resources here, and you use your engine and we'll use our engine discriminately and between us we will move everything onto the piers as the occasion arises." That is what happened. That is the testimony of the Commandant in the record of the case.

Now that is not by any means any derogation of the obligation of the carriers to place onto the piers that traffic which moves under the ship-side rates. Although the Commission characterized that situation as a contribution of the engines by the Belt Line, there is no evidentiary basis whatever for such a conclusion. No witness for the carriers ever contended that they were doing that as an eleemosynary institution. They were doing it because that was their obligation under the ship-side tariffs and had been so for 20 years, and they merely continued to do what they had been doing subject to this practical arrangement with the Army.

COMM. PATTERSON. Is it true that the Commandant would not permit the locomotive of the carriers to proceed onto the piers.

MR. MACGUINEAS. Oh, far from it. The Belt Line switch engine did come onto the piers and has always come onto the piers during Army operation.

COMM. PATTERSON. And delivered these particular cars?

MR. MACGUINEAS. Certainly. Placed the cars right on the pier. That is my point.

645A COMM. PATTERSON. At ship-side?

MR. MACGUINEAS. Surely.

COMM. PATTERSON. If they placed the cars, why did you want the pay for placing the cars?

Mr. MACGUINEAS. We did not ask that. Our complaint does not go at all, as I endeavor to make clear, to the matter of placement of the cars. Our complaint goes to wharfage charges and the unloading of the cars which are at the pier; to unload from car to pier floor at the ship-side berth, as the phrase has it.

That is all we are asking for. It is that we be compensated for the performance of that service which we perforce had to perform because the carriers would not do it as soon as the Army took over.

I think your questions emphasize the irrelevance of this so-called placement issue. Nevertheless it seems to be one of the factors which influenced the Commission in reaching its last report in this case. The Commission, in its report, made another statement which apparently it considered important and that was this "the wharfage and handling at the defendants' public commercial piers or transportation provided by them for the shippers, providing a wharf and handling the freight at the complainants' piers are not transportation, but merely facilities provided and work done by a shipper for himself on his own property, at his own convenience and expense, before or after the  
646 transportation is performed."

Now I respectfully submit that when that statement is analyzed with respect to the facts of this case, it is a little short of astonishment.

We have here a physical act: one, bringing the car from the yard back of the piers onto the pier. The second physical act is unloading that car onto the floor of the pier to provide reasonable access to the ship's berth.

I say it must be that that act either is or is not transportation. Whether it is or is not transportation, certainly cannot depend upon whether, in a given situation at a given time, that act is performed by the carrier or by the shipper, and yet that is exactly what the Commission seems to have said, that because the shipper did it here, it therefore becomes not transportation, but when the carrier does it, it is transportation. But the very question in the case, is whether the carrier's refusal to do it is not a breach of its obligation to provide the transportation which it contracted to perform by its tariffs.

Fortunately, that question has been specifically decided in a very recent opinion by the Supreme Court which the Commission did not see fit to refer to in its report.

I refer to the case of the Railroad Retirement Board versus Duquesne Company in 226 U.S. 446, that is the coverage



under the Railroad Retirement Act, of a warehouse 646A which was on the line of the Pennsylvania and performed the service of loading cars from the Pennsylvania track onto its warehouse and their storing freight.

The Supreme Court specifically adopted the definition of transportation under the Interstate Commerce Act as controlling in this case, so there can be no question that this decision is a construction of the meaning of transportation under the Interstate Commerce Act.

May I with the permission of the Commission read briefly from what the Supreme Court said in refutation of precisely the issue advanced by Duquesne Warehouse in that case, which was the precise issue which seems to be stated in the Commission's report in this case:

The Supreme Court stated as follows: "We have noted the loading and unloading services rendered by Duquesne. The duty of unloading carload freight ordinarily rests with the shipper or consignee, but it is a transportation service within the meaning of the Interstate Commerce Act. Its cost may be included in the line haul tariffs or separately fixed or allowed as an additional charge.

"Duquesne's answer is that the service of loading and unloading is done by it for its customers, that these services are rendered before railroad transportation has begun, or after it has ended."

That is precisely the statement made by the Commission in this case. 647

"That they are not and cannot be a part of railroad transportation since the tariff or the Pennsylvania forbids it from performing the services."

In this case, the charges for loading and unloading were required to be paid by the shipper.

The Supreme Court continues: "The question, however, is not, whether in these cases, the service of loading and unloading is being rendered by the Pennsylvania and is therefore in fact a part of its transportation, it is, when a carrier's affiliate is performing a service that could be performed by the carrier and charged for under the line haul tariffs. If it is such a service it is a transportation service within the meaning of the present act."

Then the Court concludes by saying: "It is sufficient for the disposition of these cases that the loading and unloading services performed by Duquesne are services performed in connection with the transportation of property by railroad."

Now, as I apply that case to the Norfolk situation, it is this: there can be no question that the railroads may properly include in their tariffs, the performance of wharfage and handling at Atlantic Coast terminals. They have done that very thing for more than fifty years. They have done it specifically over the Army base piers at Norfolk ever since the end of the first world war.

648 We do not have in this case at all, a question as to whether, if the carriers' tariffs had never provided for ship-side service, whether they could be compelled to render it. The fact is, their tariffs did provide for ship-side delivery, and that property; therefore, became a part of their transportation obligation, and it is their failure to live up to that obligation about which the government complains in this case.

Another statement is made in the Commission's report which seems to me surprising, to say the least, and that is this: "the complainant could have had its traffic handled at the defendant's expense, if it had used the defendant's piers and had been willing to accept the service the defendant was able to provide."

Now, surely the Commission did not mean to say that under the circumstances that prevailed at the port of Norfolk, during the war, when without dispute in this case, not more than approximately one-third of the traffic which moved over the Army base piers could conceivably have been handled over the two railroad-operated piers at that port. Surely, the Commission did not mean to say that under those circumstances the government should have routed all of that vital wharfage over the two railroad piers, knowing full well that those piers were utterly inadequate to handle that traffic, and that that was the only right of the government under the circumstances of this case.

649 We must recognize that the Army base piers at Norfolk are a necessary and vital facility at that port for the interchange of rail-water traffic. The carriers themselves have recognized it for more than 20 years, for they themselves have voluntarily used those base piers as a major point for interchanging rail and water traffic. Certainly when the war increases the necessary traffic moving through that port, the necessity for using those piers increases rather than decreases, and certainly the Army and this Commission I am confident will not say that the Army should have been relegated to the position of using the railroad piers which were hopelessly inadequate to carry the traffic.

With respect to the fact that the tariffs of the carriers continued for varying periods of time—and some of them still continue—to show transport trading and terminal corporation as the operator of the Army base piers at which they agree to absorb the wharfage and handling charges, the Commission dismissed that fact as an oversight by the carriers.

I do not think the record in this case supports that conclusion. The fact is that ever since 1921 when a series of different terminal operators has operated the facilities at the Army base piers, the carriers have never been concerned to see that their tariff named at a particular time the particular operator of that facility.

There has been in some cases a time lag of years before the carriers changed their tariffs to show the particular operator who happened to be operating the facility.

That seems to us to show that our interpretation of those tariffs is correct, that what the carriers meant when they published ship-side tariffs and mentioned in varying language, "Transport and Terminal Corporation," they were talking about these piers, and in effect they were telling the shippers, "if your freight, traveling under a ship-side rate moves over those piers, we, the carriers will absorb the terminal charges for wharfage and handling."

The same thing is true when the Army took over the piers. As far as a tariff representation is concerned, we say, and we think it is justified by the entire past course of conduct of the carriers at this port that those tariffs continued to hold out, that the carriers would absorb the handling charges at that port. Nevertheless, the carriers flatly repudiated that tariff obligation as soon as the Army took over. The Army necessarily took over that obligation itself, but having done so and having performed a part of the carriers transportation obligation, made so by their own tariffs, the Army, as a shipper, is entitled to a reasonably fair allowance for the performance of that obligation of the carriers. That is the basis of our case.

I think there has been some confusion at various stages with respect to the position of the Army as a terminal operator. The Army has never contended that as a terminal operator it could compel the carriers to hire it to perform these services. It is as a shipper that the Army is entitled to the reparations which it is claiming in this case, because, as I said, it has been compelled to perform the obligation which the carriers have repudiated.



COMMR. PATTERSON: The carriers refused to perform this wharfage service?

MR. MACGUINEAS: That is right.

There is dispute in the record and disagreement among the Commissioners as to the facts in that connection.

The last report of the Commission, the majority of the Commission took the position that the carriers could not do it, that the carrier performance of that obligation was out of the question, under Army operation of the pier.

We contended that that conclusion, as a matter of fact, is quite unsound. The Commandant testified, and there was no contradiction of this, that he was willing to permit the carriers to bring their own civilian labor force onto the piers, and to perform the unloading service, subject only to requirements of investigating the personnel against sabotage, security and that sort of thing.

We say that on this record the conclusion should be made that the Army did permit the carriers to do that—would have permitted them to do it, had the carriers evidenced at any stage the slightest inclination to perform their tariff obligation. On the contrary, from the day the Army took over, the carrier seized upon that as an excuse to get out of performing that tariff obligation and never made the slightest effort to do so, never made a single request to be permitted to perform their tariff obligation under Army operation of the pier.

COMMR. MAHAFFIE. Was there anything in writing either way as to that obligation at that time?

MR. MACGUINEAS. There is, as plaintiff exhibit 1 in the case, a series of letters which passed back and forth between various officials of the Army and various of the carrier's. Various of the carrier's demands and refusals.

It is true that the initial statement of the Commandant of the port was that he requested an allowance but before this suit was filed, that he specifically requested performance of service, and we have always taken the position in this case, that the carriers have the option either to perform or give us an allowance. That we are willing and have been willing that they exercise that option. They, however, have seen fit to do neither, neither to perform nor give the allowance.

COMMR. MAHAFFIE. When the allowance was originally requested, was there any discussion of performance by the carrier in lieu of an allowance?

MR. MACGUINEAS. Yes. In other words, the correspondence in effect made a demand for performance or allowance. Is that the Commissioner's question?

Commr. MAHAFFIE. That is my question, yes, whether the matter of actual performance was discussed in those documents?

Mr. MACGUINEAS. Yes; Yes; it was.

Commr. AITKENSON. Mr. Brooks.

#### ARGUMENT OF BENJAMIN J. BROOKS

Mr. BROOKS. I think your honors understand that at the present time this case has resolved itself into one involving reparation, only.

The issue, as stated in a couple of these dissenting opinions in the last report are as follows; Commissioner All-dridge stated, "the issue in this proceeding is, after all, a simple one prior to 1942, wharfage and handling between carriers and ships at the particular piers involved were provided by private interests, and the charges therefore, totaling 4 cents per 100 pounds, were absorbed by the defendants. This practice, together with other circumstances shown of record, establishes the fact that the line-haul rates of the defendant's were made in contemplation of the absorption by them of these terminal charges."

"On June 15, 1942, the United States Army found it advisable, or necessary, on account of the exigencies of war, to take over these terminal facilities and to perform the services, but defendants continued to exact the same line-haul rates that applied when they absorbed the charges of their terminal agent."

Commissioner Splawn puts it this way: "During the war emergency it was necessary in the public interest for the Army to take over those facilities and to perform the work heretofore performed by the terminal company. The responsibility of the defendants under their published tariffs was therefore discharged in substantially the same manner by the Army as heretofore by the terminal company."

"The issue here is whether the Army should receive the 4 cents for the facility it supplied and the work it has done in place of the terminal company, or, whether the defendant railroads serving Norfolk should be permitted to retain it."

"As things have worked out, and under the majority report, the Army is penalized for acting in the public interest, as well as, if you please, in the interests of the defendants, by making it pay twice for the port services; once in the established ship-rates, which were single factor ship-side

rates, including wharfage and handling, as well as the line haul transportation. And again—they paid once in the single factor ship-side rate, and again by providing the wharfage and handling itself.

Now, it is only under unusual circumstances that the railroads perform loading and unloading services on carload traffic. They do it on live stock and certain other instances, but as a general rule the shipper performs those services.

As stated at sheet 4 of the report, "It is not the legal duty or practice of the carriers to perform handling services on carload freight, except in unusual circumstances, such as livestock or freight that is to be trans-shipped by the  
655 railroads or their agents."

Now, at the north Atlantic ports, it has been a practice for years and years and years of publishing these single factor, ship-side rates, and observing on water borne traffic, the certain fixed port differentials. Taking New York as a basis, Philadelphia is 2 cents under New York, and Baltimore, Norfolk, Newport News, 3 cents under New York. In other words, to maintain those fixed port differentials and for the benefit of the shipping public and foreign buyers or sellers, the practice grew up and has been maintained for years and years, of publishing the single factor ship-side rates under which the railroads hold themselves out to perform and to furnishing the wharfage facilities and to perform the loading and unloading services.

There was a case back in 157, ICC, 20 years or so ago. 157, ICC 663, decided September 30, 1929, in which proceedings, the question of separation of the terminal charges from the line-haul rates was up for consideration. Certain interests wanted to have the terminal charges published separately at Norfolk, Philadelphia, Baltimore, and the other ports.

The Commission, in its consideration of this case, made mention of the fact that I have just stated about these single factor ship-side rates, and that the rates to and from Norfolk, or Newport News on the "C&O" maintained by the  
656 "N&W&TC&O" include wharfage and handling between wharfage and ship-side rate. The rates to and from Norfolk maintained by other southern carriers do not as a rule include the port services to and from ship-side."

So that from southern point, as a general rule, the wharfage and handling charges are published separately, so that the shipper would pay the line-haul rate to the carriers.



and then if he used the services of the carriers for the wharfage and handling, he would pay for that. If he provided his own services, he did not pay it. But because of this situation, at the north Atlantic ports, the railroads held themselves out to furnish that service.

The Commission, at page 685 of its report stated "whether a rail carrier may be required to turn traffic over to a municipal or private competing facility at a port and absorb the port charges of the facility to which the traffic is delivered when the railroad itself has provided facility to accommodate traffic, is the question here presented. The carrier has the right to perform to itself, any transportation service which the carrier may lawfully be required to perform."

And going on, "the railroads may make such rules, and so forth, so as to retain the traffic to their own facilities, and prevent their competitors from taking their business away from them."

The rail carriers at the north Atlantic ports select the rail-water facilities that are to be used in connection with ship-side rates—this is quoting from the Commission's report at 686 "and should a shipper insist upon the use of facilities other than those selected by those carriers, he would be required to pay once for the port services in the established ship-side rates, and again for the services performed by the municipal or private facility."

Here, there is absolutely no question of requiring the rail carriers to turn the traffic over to a municipal or private competing facility and absorb the port charges of the facility, because here the railroads have selected the rail-water facilities to be used in connection with the ship-side rates. And with respect to the Army base piers, they made this selection when they published, because of wartime conditions, and that is important, wartime conditions, the railroads published the tariff provision which provide for the application of export rates on shipments consigned to the U. S. Government and handled through Army and Navy bases for export to foreign countries.

At Norfolk this had the effect of adding the Army base piers, on January 15, 1942, to the list of railroad and public commercial piers over which the railroads had previously restricted the inclusion of wharfage and handling charges in their transportation rates.

The carriers, when the Army took over its piers at Norfolk, should at that time, on their own initiative, have pub-

lished the necessary tariff provisions or issued a  
 658 section 22 quotation to take care of the situation and  
 either make a deduction from their single factor ship-  
 side rate, or to make the government an allowance of the 4  
 cents—

Commr. AITCHISON. Did you say the Army should have  
 done that?

Mr. BROOKS. The railroads should have done that on their  
 own initiative.

Now, the Army base piers are in no sense of the word,  
 private piers. They are piers that have been used ever  
 since their construction, finished just after the first world  
 war. They have been used by the railroads or by the agents  
 of the railroads as probably the principal facilities over  
 which water-borne traffic was handled at Norfolk. Now  
 they have gone back and are again being used by the rail-  
 roads and their agents to handle water-borne traffic.

Section 68 of the Act, it seems to me, plays a prominent  
 part in this case. The railroads have played particular  
 stress on *ex parte* 104. The Terminal-Switching Allowance  
 cases.

Those cases involved switching or spotting service at in-  
 dustries, and the question as to when the service under the  
 line-haul rate was completed was involved there, while here,  
 wharfage and handling at a port are involved, and the rates  
 specifically included wharfage and handling. But even and  
 if the principles of *ex parte* 104 Terminal Allowance cases  
 659 were pertinent to the issues in the normal wharfage  
 and handling case, are not pertinent here, because,  
 acting under the provision of section 68 of the In-  
 terstate Commerce Act, the railroads provided for the use  
 of Army bases in connection with the movement of export  
 traffic and as the handling of the traffic at the Norfolk Army  
 base could best be handled by the Army, section 68 required  
 the railroads to permit the Army to perform such handling.  
 Questions involving pooling of services, railroad conven-  
 ience, and election of industry to perform services are there-  
 fore not involved here.

Now, the railroads talk about that special tariff provision  
 by which the Army and Navy bases were included in the fa-  
 cilities over which water-borne traffic might be handled, or  
 the export traffic of the government, as being a concession  
 to the government.

That was in no sense a concession, it was a war-time  
 necessity, and definitely so.

As I stated a bit ago, the railroad should have provided for an allowance to the government for providing wharfage and handling. Export rates have not really been made applicable through the Army base at Norfolk because no tariff amendment was made to cover the wharfage and handling at that base.

The law does not require the carriers to supply wharfage and handling on water-borne traffic. That was the concession to the carriers at the north Atlantic ports, permitting them to hold out the facilities, to publish these single 660 factor ship-side rates, and to furnish the wharfage facilities and to perform the handling. That was the concession to the railroads.

However, that concession, of course, would be subject to the provision of the act, such as section 68, under which the carriers are required to adopt "every means within their control to facilitate and expedite military traffic."

Now, the carriers did that and they did a swell job in moving the war-time traffic. They did a good job at the Hampton Roads Port of Embarkation, but they are holding to the 4 cent per 100 pounds that should have been turned over to the government.

Your honors, it is definitely a case there of unjust enrichment.

Now, what happened right across the way, across the roads there at Newport News, the government took over the "C&O's" piers there, took over the "C&O's" men and all, and the "C&O" paid them. C&O furnished the wharfage facilities, but the C&O paid an allowance to the government for performing the handling services and that allowance came out of the very same rates that the carriers over at Norfolk, other than the Norfolk and Western, are holding onto.

COMM. MAHAFFIE. Was that allowance under a tariff or section 22?

MR. BROOKS. It would be under a section 22 quotation, under a contract they had with the government.

661 And a similar allowance made at Boston under identically the same circumstances as obtain at Norfolk, allowance for wharfage and handling.

Then the Norfolk and Western, right at Norfolk, what did they do? They have paid the major portion of the money that they collected on this 4 cents per 100 pounds for wharfage and handling. As stated by Commissioner Splawn in his dissenting opinion, "In the light of such



conditions, one of the principal defendants"—that is, N & W — "has conceded justness and reasonableness the defendant's claim to the extent recognized in the original findings and has made settlement accordingly."

Commr. MAHAFFIE. The net cost of the settlement was somewhat diminished, was it not?

Mr. BROOKS. That may well be true, your honor.

However, going back before they collected any of the money and when negotiations were being carried on between the Army and the carriers, they took it up first with the Belt Line and then with the Norfolk and Western. It seemed to kind of take the lead on the part of the carriers.

In a letter which appears at page 4 of exhibit 1 in the case, Mr. O. W. Cox, General Traffic Manager of the Norfolk and Western Railway, wrote a letter to Lt. Col. C. R. Lasher, reading in part as follows: "If only government freight is handled, it seems to us that it would be proper to provide for wharfage and handling allowances in all instances where the rates are so published as to apply to or for ship-side. That is, where they include wharfage and handling."

The government very definitely is entitled to 100% reparations for the entire period.

I will save the balance of my time for rebuttal.

Commr. AITCHISON. Mr. COUSINS.

#### ARGUMENT OF WINDSOR F. COUSINS

Commr. AITCHISON. You have agreed with Mr. Reynolds on a division of time?

Mr. COUSINS. Yes.

If the Commission please, this case was decided on May 3d, by a 6 to 4 vote, and we would not be here today, of course, except for a very unfortunate situation within the Commission.

I am not going to take much time to argue the case this morning. This will be the third time I have made this speech. I think our minds are all made up. As the Commission sits this morning, it is entirely divided, 4 to 4, according to the records heretofore.

The importance of this case, is reparations only, as has been said, because the Army is no longer operating the piers at Norfolk and has not been for some time.

To the railroads, the prime important thing now, as in the beginning, is the principle involved.

663 Commr. AITCHISON. Why is there any principle involved when it is within your power to make a tariff that is perfectly clear, and put it up to us that way?

Mr. COUSINS. The principles that are involved, if the Commission please, depends upon whether the Commission will require, as the complainant requests, something to be done in this case, which is not authorized by any tariff, has never been in any tariff, about which there is no question in any tariff, and which has been upheld and required time and again by the Commission.

The precise question is whether the railroads will be required to expand their port practices beyond anything that has ever been done before, and that is to increase their accessorial services, and to give a large additional amount of free services to shippers of water-borne traffic.

If that should be the result of this proceeding—and that is the thing we have feared from the beginning—it would be contrary to everything the Commission has done before in cases of this character.

The significant question is whether the railroads shall be required to pay allowances to a shipper for unloading his own freight on his own pier, plus the question which has been slurred over by the government from the beginning, right up to this morning, which does not seem to me to be recognized in the dissenting opinions of the Commission, with any clarity, plus the question as to whether the  
664 railroads shall be obliged to pay an allowance for the use of the piers. That is, per rental. That is wharfage, which the Army has provided for its own convenience.

Now, I want to discuss that a little bit under three points.

The first point is that the railroads do not and never have, along the Atlantic coast here, unloaded water-borne traffic on private piers. All up and down the Atlantic coast, as the record shows, are numerous private piers, including more than a dozen in Norfolk which are named in the record, which shippers maintain and operate to handle their own water-borne freight for their own convenience.

It must be assumed that there is some advantage to shippers to providing facilities of that character, otherwise they wouldn't do it.

The late Commissioner Eastman referred to that once in a case and said that obviously there was an advantage to a shipper, and in that case it was the Dutton Lumber Company, in having its own piers, controlling its own freight, and keeping other shippers off.

When they have the advantage of their own piers, the railroads have never gone on those piers and unloaded freight from cars or vice versa from the pier into the cars.

Commr. SPLAWN. You never went on these piers before the war and you do not propose to use them after the war?

Mr. COUSINS. Are you asking me that?

665 Commr. SPLAWN. Yes.

Mr. COUSINS. Of course we have been on these piers.

Commr. SPLAWN. Under the terms of the tariff?

Mr. COUSINS. Yes.

Commr. SPLAWN. You have paid for the unloading and loading?

Mr. COUSINS. Yes, which was entirely consistent with all of our practices, because they were a public railroad terminal and we performed the services which for 50 years we have been accustomed to perform, because the piers were our terminal. When the Army stepped in and took them away from us and made them an Army terminal for the use of Army freight, then they were no longer a railroad terminal. The Army was not our agent. We had no obligation to unload. However, that is the whole case and I would like to take that up in a little more detail.

Commr. SPLAWN. If you can convince me of that thesis, I have no interest in this thing other than seeing that the right thing is done under the law.

Mr. COUSINS. I will endeavor to do that, Mr. Commissioner.

Commr. SPLAWN. And I know that is true of any Commissioner here. You said we were evenly divided. I think we are all sitting here judiciously and listening to you with great interest to see if we have misunderstood you heretofore.

Mr. COUSINS. I will refer in a moment, Mr. Splawn, to one or two findings in your opinion, as to which I  
666 will try to convince you there is some error involved.

All up and down the coast, there are not only the private piers of the kind I have been talking about, but there are permanent Army and Navy bases. I understand that the permanent Navy base at Norfolk only a short distance from these piers handled a great deal more freight during the war than this Army base. Whether that is true or not, it is a tremendous operation. The railroads have never gone on that base and unloaded freight from cars, although they did during this war publish the special tariff



provision making the export rates apply through that base like all other Army and Navy bases.

The difficulty with the complainant's case here is that the Army wants both sets of advantages in operating its own pier. The ordinary shipper must take the ordinary disadvantages along with the advantages. The disadvantages are he loses the free railroad service. He has to take it. The Army wants both. It wanted to run the job, handle its own freight and still get the advantage of operating over the pier as if it were a railroad pier as it had been in the past.

Now, my second point: Turning from the first point, which was that the railroads never have performed a service on private piers, my second point is that in no event do the railroads pay allowances for this sort of thing. That is something we have never held ourselves out to do. We

have always exercised our right to perform the work, 667 and in this case we had no alternative.

That point has been argued and there is only one way you can decide it and that is to read the record. If you read the testimony of the Commandant, Général Kilpatrick, in this case, and then come to any conclusion other than the fact that the railroad could not have performed the work to the satisfaction of the Army, within any reasonable standard of convenience to themselves, or consistent with any usual standards, then my point is wrong, but I am not going to argue that at length. All I am going to say is this: the Army makes it clear that the Army never expected the railroads to perform the service. They announced from the beginning when they took over the piers, that they, the Army, would perform all of the services.

That is in the record.

The Army operated negotiations with the railroads asking for allowances. Week after week and month after week, it asked for allowances. Mr. MacGuineas answered Commissioner Mahaffie this morning, yes, that they did connect up with that demand of service.

When the negotiations had proceeded for the length of one year, after they started, during all of which time only allowances were sought, then at the end of the year, we did get a letter saying that as a prerequisite to the filing of this complaint, they were demanding service.

Now, the correspondence is all in the record. Of 668 course, if that is the kind of demand for service that gives the railroads their legal alternative, there it is,

but it requires some twisting to get that into the form of an alternative. In the formal complaint there was a request for money payment and not for service. That is on the record. The record shows the railroads could not have performed, by the admission of the General, at their convenience, that they could not have performed with railroad labor according to the Army needs, and in either event they could not have performed, except by pooling their services.

Now, there is some little question in this case as there has been, I think, in the last argument, from the beginning, as to whether we had a question of reasonable convenience in this case when we came to serve a pier.

I believe one of the Commissioners suggest that when a railroad shifts cars back and forth on a pier, it is obliged to meet the convenience of the vessel, too, as in any form of interchange, and, of course, that is correct. On a terminal where you are interchanging with a vessel, but on a terminal where you are delivering to a shipper 2 miles short of the piers and do not get any closer than that to the vessel, then the usual considerations of railroad convenience do come into play, in my opinion.

Now, my third point—

669 Commr. AITCHISON. Do not the same considerations with respect to the necessity of conforming to the rights of others apply when you switch through city streets, or conform to business usages and things of that sort?

Mr. COUSINS. That is right, Mr. Commissioner, that is perfectly true. However, I am going to mention in a moment, with respect to the *ex parte* 104 principles, there is no interpretation of anybody, so far as I know, of the *ex parte* 104 rules and principles which go beyond this point: that when the industry, in this case the Army, designates the interchange tracks upon which its cars shall be placed, and directs the railroads where and when to place the cars, and that is done, I say that ends the transportation service and I do not believe anybody ever contends that you need go beyond that, or from the standpoint of the bench that the railroads may be permitted to go beyond that.

However, I have not finished my last point under the usual situation that I was developing at the point and that is this, it is the thing that has been blurred over from the beginning to the end and Mr. MacGuineas hop-skipped and jumped it this morning, as he has from the beginning.

We are talking about 4 cents allowance in this case, one cent of which is for wharfage. That is more than 1 fourth

of the reparations, because some of the traffic was in open-top cars, which would only be subject to the 1 cent and not the 3, so we are running into an important part of the case here. Here was a facility that the railroads had been using for 20 years for the interchange of freight with vessels.

The Army ceased the facility and took it away from the railroad agent.

Now, for what is it to be paid, pier rental or wharfage, after having done that? Mr. MacGuineas said the railroads had an alternative. What alternative? To construct another pier, to try to duplicate it there on the spot and say to the Army, "Don't use the one you have taken away from us, come over and use the other." What was our alternative with respect to the 1 cent? Where can there be any question about that?

Now, I want to say something to Mr. Commissioner Splawn on that point: he says in his dissenting opinion, "The finding that the plaintiff could have had his traffic handled at defendant's expense if it had used defendant's piers is contrary to the evidence, which show that only about 37 per cent of the traffic which moved over complainant's piers in 1943 could have been handled over defendant's piers."

I assume that what the Commissioner meant in a majority opinion was that if the Army had seen fit to leave the railroad terminal in its control, it could have had its traffic handled there as in the past. I do not suppose the majority meant to say that after the Army seized the facilities it could have still used the railroads. If that makes a case, the Army slipped up a little bit in leaving 37 per cent of the facilities there. If the Army had just seized them all, so we had nothing, then they would have a clear cut case for showing we could not perform our obligation. However, they only seized one.

And bear this in mind, as Commissioner Splawn says, he says the remaining facilities were only adequate to handle 37 per cent but since the complainant shows that the Army had concentrated 10 times the normal traffic in Norfolk, that 37 per cent was still 3.7 times as much pier as we needed to handle normal traffic.

Now, how much pier facilities are railroad obliged to furnish in any event? I say none. None whatever.

Commr. SPLAWN. Was there anything here that required you during the war to furnish any more than you did?

Mr. COUSINS. No, sir. No, sir. Especially not after the government took what we had.



COMM. SPLAWN. Was the traffic handled any differently during the war, so far as you are concerned, the line-haul carriers—up to the point of interchange at the terminal from what it had been handled before the war?

MR. COUSINS. Not so far as I know. Not as effects this case. Of course, there were difficulties in operation, haste and all that sort of thing, but as effects this case, no.

COMM. SPLAWN. The effect of the government seizing these piers was then merely to substitute its own service beyond the point of interchange for your agent?

672 MR. COUSINS. Yes, Mr. Commissioner, but “merely” is a big word in that sentence. Not “merely” to substitute its services, but to change the operation and handle things at its own convenience in its own way, in an unusual way, and not as a public wharfinger does business.

COMM. SPLAWN. That part of it merely had the effect of increasing your business, did it not, that moved on those tariffs?

MR. COUSINS. Our business to Norfolk was greatly increased, yes.

COMM. SPLAWN. And so far as loading at ship-side is concerned, it was done satisfactorily to the line-haul carriers?

MR. COUSINS. No, sir. Neither satisfactorily or unsatisfactorily. It was no concern of ours whatever. We were not there. I do not see the grounds for the dissent, if that is what your Honor has in mind.

I just want to say one more word about this wharfage allowance: what that meant was this: The railroads hired this pier, to an extent, from the terminal operator, heretofore the public wharfinger, and paid him a pier rent for the use of it and measured that rent by the amount of railroad freight handled and paid them 1 cent a 100 pounds, or 20 cents a ton. That is what that was. It was no different whatever than what it would have been if we had lumped the amount together and paid them \$20 thousand a year.

673 The government seized the pier, took it away from us and then said, “Now, we want you to pay us rent”. Why we should pay the 1 cent would be most difficult for the government to prove.

COMM. ROGERS. In your line-haul rate you were charging the government that 1 cent, it would not be reasonable for you to keep the compensation and not pay them either, would it?

Mr. Cousins. That comes under reasonableness of rates. The question is whether the railroads are unjustifiably enriched. If there is anything that bothers the minority in this case, I believe that is the question. That is what I get out of it. That is the government's real case here, that is Mr. Brooks' case, and that I think we ought to meet, because as Commissioner Splawn says, on the surface, the railroads appear to have performed less service and yet to have received the same revenue.

Now first just let me say that there is nothing unique about that sort of situation. That is the result of all of your *ex parte* 104 cases. When you get to the point where a shipper has to perform his own plant switching for himself that the railroad did for him before, he still pays the line-haul rate.

Commr. ROGERS. I do not agree that that is on the basis of 104.

Mr. Cousins. I am only talking about the principal of 104. I say that when a carrier is relieved from plant switching, because of interference of the shipper or the desire of the shipper to perform himself, or for any other reason, when the carrier is relieved, it then performs less service 674 for the same line-haul rates. I am only saying that there is a comparable situation where you might say the railroads are unjustifiably enriched.

Commr. ROGERS. You have from there to find out how far your line-haul rate went in your 104 proceedings.

Mr. Cousins. Certainly.

Commr. ROGERS. There is no doubt in this case how far your line-haul rate went.

Mr. Cousins. The situation is the same in both situations. What I am trying to say, Mr. Commissioner Rogers, is that whatever the cause of cutting off a railroad delivery service in an industry, short of the final place that the car is going, and there are various things that come up to cut off that railroad service and put the service on the shipper himself. Whatever the cause is—and it has nothing whatever to do at the moment with this case—the railroads still get the same line-haul rates although they perform less service than they would otherwise perform if they did not encounter some interference or some desire of the shipper and so forth.

Now that is one situation.

In all of the wharfage cases similar to this one, such as the Weyerhaeuser case, the result has been the same.

Wherever the Commission has held that the railroads were not obligated to unload cars, as in this case, they have performed less service for the same line-haul rates than they do for the shipper who get his freight unloaded.

Now it is the same in the case of a shipper who has export freight. If he does not bring himself within the export rules, he must pay the domestic rates. These things follow, because of the rules of the game. Therefore I say it is not unusual if we find in this case, for some good reason, that the Army was not entitled to this service; and yet the railroads kept the whole revenue, there is nothing startling about it. I do not think the Commission would be at all concerned about it if we had a shipper as plaintiff here instead of the government.

Now, the answer is that the rates paid by the government were not unreasonable from any standpoint. Despite the fact that other shippers, including the government, could have secured more service under the same rates. Of course, the government did so at the other ports by using the public piers.

The export rates which the government paid here, and which apply at all the ports on a related basis, included no factor, and never included any factor for this unloading service, or the pier rental. That is, the wharfage.

Let me read again what Mr. Commissioner Aldridge said in his decision, "This practice together with other circumstances shown of record establishes the fact that the line-haul rates of the defendant's were made in contemplation of the absorption by them of these terminal charges."

Now, if the Commission please, if that means that there is something in the export rates, some element, so much money in them that would not be there if we did not have this established practice of unloading freight, if that is what the Commissioner's statement means, it is 100 per cent wrong, because there can be no dispute on this record that nothing was ever added to the line-haul rates, the export rates we are dealing with here, to include the port service and to cover the port service of the local port lines rendered. The line-haul carriers don't even participate in it.

COMMR. ALLDRIDGE. You mean by that, I guess, that the record does not show that the line-haul rate was broken down in all of its elements to show what was included? Is that what you mean?

MR. COUSINS. I mean I can demonstrate there is no factor in them, yes.



Commr. ALLDRIDGE. In other words to demonstrate them, you would have to break it down and take it up to determine what elements of cost were specifically put together to make the line-haul rate, is that right?

Mr. COUSINS. I do not think so, and for reasons which I will show you.

Commr. ALLDRIDGE. How can you say, then, that if this line-haul rate had taken care of those services for a long number of years, those services, then, were not included in that lump sum line-haul rate?

677 Mr. COUSINS. That is what I propose to show you.

Commr. ALLDRIDGE. I would like to see it.

Mr. COUSINS. I will show you from several different approaches and there is nothing contrary in the record.

One approach is that the line-haul carriers which make the rates do not have anything to do with this service, do not know anything about it and do not participate in it. Under the same line-haul rates, sometimes the local port roads grant the service and sometimes they don't. And yet, the same line-haul rates apply.

Commr. ALLDRIDGE. Do you mean to tell me, that in making these line-haul rates to that port, those who have responsibility for doing that, did not know what port services would be involved. Is that what you mean to say.

Mr. COUSINS. Practically speaking, yes. I do not mean to say that the railroad rate makers are so stupid that they do not know what the practices are, but I mean to say they paid no attention to it with regard to these rates and actually did not know what the differences were, one port from another, because they are different.

Let me tell you how the rates were made.

Commr. ALLDRIDGE. Is that how line-haul rates are made here?

Mr. COUSINS. Let me tell you how they are made. It is perfectly clear, everybody knows the answer. The Commission prescribed, some 15 years ago, more or less,  
678 new class rates in official territory, and when they did so, it threw the old port rates and differences out of kilter.

Mr. Brooks a few minutes ago described to you how the import and export rates were made, but what he told you has not been good for some 15 years because we had to change it when the class rate case was decided.

Here is what happened: The railroads adopted the prescribed domestic Baltimore class rates and published the same export rates.

COMM. ALLDRIDGE. Now when they did that, are we going to assume that they did not think they would include, and still be reasonable, all the terminal costs incident to the export service?

MR. COUSINS. They have to cover the cost, of course. Technically they are in there.

COMM. ALLDRIDGE. And we to assume that when that act of adopting them for that purpose, the men who did that did not know that those expenses would come in there?

MR. COUSINS. They knew that they would be in, of course, but they took your domestic rate, which does not involve any unloading of cars—

COMM. ALLDRIDGE. Regardless of what the mechanics of the procedure was, they had to register final judgment about the reasonableness of those rates for that service, did they not?

MR. COUSINS. Yes, but I am only trying to show  
679 you, Mr. Commissioner, that nothing was put into the rates because export rates involve unloading and domestic rates do not.

Otherwise if they were going to take the unloading and wharfage services into account, it may be presumed that they would have added something because certainly the domestic rates that you prescribed included no element for that kind of service that is not given on domestic traffic.

COMM. ALLDRIDGE. Did not the same rate specifically include a rate for picking up and unloading less than car-load traffic, but when you assume that obligation under those rates, did not your responsible officers assume that those would be reasonable for the added service?

MR. COUSINS. Technically, they have to be. Otherwise the service would be a free service uncompensated. Substantially that is what it is. But of course when the local lines published what they have at the ports, they have to do it in this way. Unless they are going to charge extra, they have to say, "the line-haul rates will cover".

We are talking about unreasonableness. The point is that the rates were never inflated to cover this and therefore they are not intrinsically unreasonable when they don't get the service. And many export commodities have moved that do not get unloading service. Lumber doesn't and it goes the same level of export and import rate. Tank  
680 cars don't. All the great quantities of freight moving through the private piers, and the permanent

Army and Navy bases do not get the service, and yet they get the same rate.

Furthermore—this is my last point on that because I really should take no more of Reynolds' time.

Mr. REYNOLDS. Go ahead.

Mr. COUSINS. When all that is said and done, the record shows with no question of doubt whatever, that the export rates the Army paid were depressed below a maximum reasonable level, so the Commission can not find that they are unreasonable.

Commr. AITCHISON. What depressed them?

Mr. COUSINS. Competition with Baltimore.

As your Honors well recall, you prescribed higher domestic rates to, and from Norfolk than you did to and from Baltimore, but the Norfolk lines for competitive reasons, hold to the export and import rates at Norfolk, and at the sixth class level, that gives Norfolk rates 4 cents below what the other ports have, generally speaking—that is rough and ready—and there is no port on the Atlantic seaboard which has a similar situation of depressed rates, except Boston, which is at the other end.

Commr. AITCHISON. It was a financially profitable arrangement, was it, for the carriers serving Norfolk?

Mr. COUSINS. What was a profitable service?

Commr. AITCHISON. What they did in the adjustment of their rates.

681 Mr. COUSINS. Well, to the extent that it brings them business, yes.

Commr. AITCHISON. As compared to the carriers that served Baltimore?

Mr. COUSINS. That it is profitable? I do not know why it should be more profitable to haul freight longer distances.

Commr. AITCHISON. What is the financial condition of the two carriers?

Mr. COUSINS. You know full well it has nothing to do with export and import traffic. We are not talking about coal.

There is one thing.

Commr. AITCHISON. I don't know that. You say I do, but I don't.

Commr. ALLDRIDGE. I do not know it either. I thought all traffic handled, coal and everything else, entered into the picture.

Mr. COUSINS. I am not going to talk for the Norfolk Lines. I had the impression they were rich coal-carrying lines.

Commr. ALLDRIDGE. That would make lower rates on other commodities, would it not?



Mr. Cousins. These rates are competitive, if you please. They are certainly below any rates which this Commission would prescribe.

That is what I contend. I am not going to argue that point any longer, but let me add one more to it: The 682 Army was not entitled under usual rules to the export rates at all in this case. Its traffic could have taken domestic rates because it was delivered into the custody of the shipper. We got nowhere near a vessel. And by special tariff concession, published at the request of the Secretary of War and Navy, the railroads made the export rates applicable during the war through Army and Navy bases. They did not make the important or coastal and coastwise rates applicable, and they are not applicable, which shows it was a special situation and a concession. Otherwise, they would have paid the higher domestic rates which I say at the sixth class level are 4 cents a pound higher than what they did pay.

Commr. MILLER. You say you made that by contract? It was a special rate?

Mr. Cousins. It was a special rate included in the tariffs.

Commr. MILLER. Not contrary to the act?

Mr. Cousins. It would have been contrary to the act if it had been in anybody's favor except the government, certainly, sir. The railroads did not interchange with a vessel at this pier, and contrary to what Mr. MacGuineas says, the operation was not the same as it had been theretofore. We delivered 2 miles back of the pier, where, as, and when we were directed in writing to delivery by the Army, and from that point the Army disposed of its freight. It 683 switched where it could. It stored the freight. It put it onto vessels, it took some over and put it back in storage. It shipped some of it out of the terminal to some other point. It did what it wanted with its freight, and the railroads knew nothing about what was going on.

Now that was not similar to what had been done in peacetime when it was our terminal. Then we did shift cars all the way to the pier. Then we paid no attention to interference, either, if there was any, because it was our terminal. And questions of interference do not arise when they are the railroad's own pier and not interposed by a shipper.

Now, Mr. MacGuineas indulged in a flight of imagination with respect to the reasons for the Army switching its own freight on the pier, and he stated that there were large amounts of freight there that we had no obligation to shift.

or something to that effect. That is not in the record. If it is, I challenge Mr. MacGuineas to cite the page where any such thing shows.

He does cite in his printed documents, page 30, but they do not support the statement he made at all.

I am obliged to leave Mr. Reynolds the rest of the time, if the Commissioner please.

Commr. AITCHISON. Proceed, Mr. Reynolds:

ARGUMENT OF CHARLES P. REYNOLDS.

Mr. REYNOLDS. I am appearing on behalf of the southern carriers that serve the port of Norfolk.

On this question as to whether or not the railroads  
684 have treated the Army fairly, I just want to quote you a sentence from the majority opinion in this case, as follows: "The majority say, 'If anything, the complainant is being favored, but of course this is not unlawful under the circumstances.'" Now, I think what Mr. Cousins has said shows that the government is being favored.

I also call your attention to the fact that a lot of the government's traffic was handled under Section 22, "at rates much less than the published rates".

Also, the fact that the railroads by special concession made the export rates applicable on government traffic, has resulted in the government paying rates in no instance higher than the domestic rates and in many instances lower than the domestic rates.

For example, the export rates on cigarettes and tobacco from important manufacturing points in North Carolina, is 16 cents for 100 pounds less than the domestic rates, and the government got the benefit of those.

Now, I want to devote the principle part of my argument to the proposition that transportation ended when the cars were delivered at the storage yard at the east end of the base, about 2 miles from the track and that from then on the traffic was handled by the government.

Commr. MILLER. You mean two miles from the pier?

Mr. REYNOLDS. Yes.

685 Commr. MILLER. You said track.

Mr. REYNOLDS. The storage yard was 2 miles from the pier.

From then on the government handled the traffic to suit its own conveniences, and under those circumstances, the railroads were not obligated to make any allowances for wharfage or handling.

In the first place, I call your attention to the fact that the government took this Army base for its own exclusive use. There is no question about that, and it is shown in a letter written by the War Department to one of the defendants about 2 months after the pier was taken over.

The letter read in part as follows: "The terminal property will be operated and controlled by the War Department. Use of the facilities by the other Armed Forces or by private concerns will be by the express permission of the War Department.

"It is intended to use the terminal facilities for government traffic only. However, circumstances may require the handling of commercial freight, and in either instance, the War Department or its agency will perform all services".

Now, that shows pretty clearly that the government neither specified nor intended to permit the railroads to perform any services on the pier.

As Mr. Cousins has pointed out, the government from the beginning asked an allowance and only an allowance, until, as a prerequisite, for the filing of this complaint, they requested one of the defendants to perform some service.

Now, the fact that delivery took place at the storage yard is made clear by the following statement from the majority opinion which is supported absolutely by the evidence of record and the statement is as follows: "The Belt Line has a classification yard at Berkley, Virginia, across the river from Norfolk.

"Adjacent to the 2 piers and included in the Army base property there is a storage yard of about 500 cars capacity.

"Since the complainant took over the operation of the 2 piers, the Belt Line delivers and receives respectively, cars of outbound and inbound water traffic on this storage yard, on tracks designated by the complainant.

"The complainant thereupon takes possession of the shipments and controls movement of the cars beyond to the pier location."

Incidentally, it is also a fact that the Army instructed the Belt Line what cars to move from its Berkley yard before those cars ever were moved and the cars were not moved until the Belt Line received instruction from the Army, just what cars to move.

Now, the fact that transportation ended with the placement of the cars in the storage yard is also shown by the



fact that the carriers could not have moved the cars to the piers and have unloaded them at their own convenience.

Moreover, the evidence clearly shows that the loading or unloading of the cars by the carriers would not have been satisfactory to the Army.

Those statements are proved by the testimony of General Kilpatrick, who was the Commandant of the Hampton Roads Port of Embarkation, which included the Army base at Norfolk.

I want to summarize briefly now the salient points of General Kilpatrick's testimony.

In the first place, the General testified that the Army base piers could not have operated under civilian direction.

He was asked this question, "In your opinion, why did the Army think it necessary to take over this pier instead of making use of the pier under the prior public operator?" And his answer was this: "That would not have been feasible at all, because the Army has to control the over-all operation, the bringing of the cars in, the allocation of ships, and so forth. It has to be Army operation. It can not work under civilian direction, I do not think".

Now, the second point in the testimony which I would like to direct your attention to is this: "The loading and unloading of the cars on the pier had to fit in with the operation of the bases as a whole."

The General was asked, "What is the difference between the operation of the piers now and what it was prior to 1942?" He answered: "The government controls the priorities of loading and the type of loading. It controls the stevedores in how they work, and when they work. When they work over-time and when they work straight-time. The unloading has to fit in with the over-all picture. A civilian organization could not handle the freight from the depot into the ships. That is supervision that the Army has to furnish and a coordination that the Army has to furnish."

The third point is that the emergency of movement was paramount. Concise dates had to be met and the supply of civilian labor was inadequate.

General Kilpatrick's testimony on that point is as follows: "There are not in this vicinity of Norfolk civilian labor to do that job. It must be supplemented by Army labor. I mean to meet the peaks of the emergency with which we are faced. We have a convoy dead-line to meet and have to work day and night. In other words, the move-

ment is paramount, regardless of who does the work. We have to keep our freight moving, we have to load our ships and meet our convoy dates."

He also made the point that the Army had difficulty which commercial interests do not have, "with the big flow of freight coming in and with the uncertainty as to specific delivery dates, we have a difficulty which commercial interests do not have. We have to load our bottom cargo first, then filler cargo, and then on top of that blow-up cargo.

"As freight comes into the piers, we are sometimes in need of bottom cargo and have to hustle those cargoes right down to the piers and work them. Whereas other cargo for the same ship, or for cargo loading later in the loading cycle, it may be in the port for several days."

Now, it is obvious, I think, that the matter of loading ships effects necessarily the matter of unloading cars and training traffic to go on those ships.

There is made clear also by General Kilpatrick's testimony, which shows that the Army unloaded the freight from the cars in its own peculiar way and to suit its own convenience.

That is, "Sometimes freight was unloaded direct from the car to the ships without touching the pier at all. Sometimes the freight was allowed to remain on the pier for some days. Or, it was reloaded into cars and taken back to the depot.

"Sometimes ships that were in process of loading were moved from the piers into the stream to make room for other ships."

As to that, General Kilpatrick, after emphasizing the necessity for Army control and supervision of the entire base, said this: "Everything, ships and everything, must be controlled by the government. Bear in mind we have embarkations and debarkations. We handle prisoners of war over these same piers at the same time. We even have to move a ship out into the stream that is loading cargo in order to load troops or to take off prisoners of war, or casualty troops.

"As a matter of fact, the carriers are under no obligation to unload cars, so that the ships may be unloaded in the manner in which they were at the Army base."

690 The carriers have no duty to take freight direct from the cars to the ships. Neither are they under a duty to re-load the car with freight that had been unloaded

from it and take that car back to the depot and their unloaded freight.

They are under no duty to interrupt the unloading of a car so that a ship can be moved and another ship put in its place.

In view of the way in which this pier was operated, it is obvious that the control and operation of the pier by the government was advantageous to it, in that the Army performed with its own labor, the extra services which it would have had to pay the railroad's agent to perform if that agent had been in control of the pier. For example, it would have had to pay the railroad's agent to reload the traffic in the car and take it back to the depot.

Commr. LEE. What do you mean by the depot?

Mr. REYNOLDS. That means warehouses in the base.

Commr. ALLDRIDGE. You mean depots.

Mr. REYNOLDS. However, the Army would have had to pay for these extra services which the pier performed by its own labor, and that labor, 50 per cent of it at least, was soldiers and Italian service units.

Now, General Kilpatrick's testimony also makes it plain that it was not practical for the individual railroads to load or unload cars of freight on the Army base piers, but the loading or unloading if it could have been performed  
691 at all, would have had to be performed by pooling the service.

He was asked: "Do you think it will be practical for various individual railroads to undertake to handle their own freight separately?"

He answered, "That would be an almost impossible operating condition." "You have to have the whole operation under one supervision and control, do you not?" His answer was, "That is desirable."

Finally, the General testified that the cars could not be unloaded by the railroads at their own convenience.

He was asked: "Would it be a satisfactory operation if the railroad personnel should unload these cars at their convenience in the way they from an operating standpoint wanted to do it?" His answer was: "No, they would have to unload them in such a way that we could keep our ships moving."

He also adds: "The loading would have to be done according to your schedules to meet your needs?" "Yes."  
"And it could not be done at railroad convenience?" "No."

In line with the record here, a decision in favor of the



complainant would overrule the *ex parte* 104 cases, and the various cases dealing with port practices which the Commission has heretofore decided.

In effect, it would also compel the railroads to employ the Army as its agent, contrary to the Supreme Court's decision in the Santa Fe case, 232, US, 199, Atchison, 692 Topeka and Santa Fe Railway Company against US, 232, US, 199, where the Court said that any service that a railroad is obligated to perform, it has a right to perform itself.

Commr. AITCHISON. That has been pretty well shot during the war has it not?

Mr. REYNOLDS. I do not think so, no, sir.

Commr. AITCHISON. How about all the re-routing and things of that sort?

Mr. REYNOLDS. All the what?

Commr. AITCHISON. The re-routing that has been required under the emergency provisions of the Act? When directed by this Commission, you must turn traffic away and give it to somebody else.

Mr. REYNOLDS. Yes, that is true, but the Commission has never gone so far, that is to my knowledge, to say that the railroad must employ a certain agent. The railroad has a right to select its own agent to do what the railroads have to do.

A decision in favor of the government would also compel the railroads to accord the Army a preferred status and to pay the 4 cents a hundred pounds at rates that are depressed.

We therefore ask that the decision of the majority of the Commission be reaffirmed. Thank you.

Commr. AITCHISON. Mr. Winn?

693

ARGUMENT OF ARTHUR L. WINN, JR.

Mr. WINN. May it please the Commission: I appear for the North Atlantic Ports. They were represented in this proceeding by the following agencies which intervened and participated in the hearing: The State Port Authority of Virginia, The Richmond Chamber of Commerce, The Baltimore Association of Commerce, The Chamber of Commerce and Board of Trade of Philadelphia, the Norfolk Port Traffic Commission, and the Port of New York Authority.

Commr. MAHAFFIE. Is Richmond one of the North Atlantic Ports?

Mr. WINN. The intervenor and I had high hopes of using the James River for water-borne traffic.

COMINT. MILLER. Water-borne traffic has always gone to Richmond.

Mr. WINN. Thank you for your help.

All of these ports, your honors, are neutral as to the primary issue in this case; namely whether the railroads should pay an allowance for certain wharfage and handling at Norfolk.

What they are concerned with is a secondary prayer under which your honors were asked to require a separation of the terminal and line-haul rates. That is to say, should require the railroads to publish the terminal charges and a lower, separate line-haul rate.

Had any such prayer been granted, you would  
694 have had a result which would have upset the entire port differential adjustment, which has been built up, and is the result of decades of port competition. That port competition has been bridled. It has been stabilized by the use of one-factor rates which cover the service from shipping point to ship-side. Once you get away from one-factor rates, you create inequalities, distortions in the rate structure, undue advantages there, and the result is you would undermine this important port differential adjustment.

Now, in all justice to the complainant, I should say that counsel for the government has throughout the case at no time emphasized this secondary prayer for a separation of the charges. I think they have been aware of the harm that might be involved in any such step.

I should emphasize too, that these ports not only intervened but participated and offered evidence showing the harm that would be done to the port differential adjustment if separation of terminal and line-haul charges should be ordered.

Now, your honors have considered the question of whether terminal charges should be separately published many times, and in exhaustive investigations where that was the issue, where all the evidence went to that, where all the thought, discussion and argument went to that question. You have unfortunately ruled against any such requirement.

Among the cases stated are "lighterage" cases  
695 203, State of New Jersey versus Baltimore and Ohio,  
245, and charges Atlantic and Gulf Ports. Now it is interesting that in 157 ICC, you had the U. S. Shipping Board, with a program to bring about a separation of termi-

nal and line-haul charges at the ports. You had several of the ports in favor of that program. You had an investigation embracing the southern ports where that was the issue, but because it was so important, you decided that you should not conclude the matter without bringing in all of the ports. It effected all of them, with the result you broadened the investigation to bring in the North Atlantic Ports. After a hearing with all the ports in and on the most careful consideration you ruled against a separation of charges.

Now, in this case the separation issue is only incidental and we think obviously. You should not, in a case where it has only incidental reference and the only evidence is against separation, you should not, in such a case, order separation.

Now we learn at the argument this morning, that so far as the future is concerned, this case is moot. I do not know that counsel for the government, Mr. MacGuineas, has made that as clear as he might have, and while it is against the rule to go outside the record in these ICC cases for facts upon which essential findings might be made, nevertheless, I think it is appropriate, natural and proper for your honors to go outside the record and look at your own tariffs to learn whether you have a case here for the future.

696 Let us assume that you know from your tariffs, such as Mr. Brooks has mentioned, that there is no issue here as to the future. I think it is incumbent upon you not to lay down an order for the future when you have no case which involves any issue for the future which is not moot.

Thank you, your honor.

#### REBUTTAL ARGUMENT OF DONALD B. MACGUINEAS.

Mr. MACGUINEAS. I would not want my silence to give any Commissioner the impression that I agree Mr. Reynolds' statement of the testimony of General Kilpatrick, the Commandant of the port is a proper or accurate statement of what he testified. I must say I think it is a very distorted statement of the position of the General in this case.

Mr. REYNOLDS. Well, I quoted exactly what he said.

Mr. MACGUINEAS. But he failed to quote a great deal of what the General said, too. It will not do me any good at this stage, if the Commissioners think that is important, I only ask them to study the transcript.

My point is, when he was talking about operation, he was talking about the whole process of getting the freight onto the ship. Now, of course, the government had to control the movement of ships when German submarines were lurking



outside the port. Of course, the government had to decide whether explosives should be placed in the particular part of a ship or not, but that has nothing to do with this case. We are not asking the carriers to load or move the ships in or out of the port or out of the slip and back again.

697 All that we are asking the carriers to do is unload those cars and put the freight on the pier floor. When they do that, with respect to traffic and ship-side rates, their obligation is done. If that traffic has, in a particular circumstance, to go back to the warehouse, that is none of the carrier's concern, we do not ask them to do anything about that; so there is nothing to this talk about convenience of operation. All the carriers have ever been asked to do and expected to do is to bring the cars onto the pier, which they are doing with their Belt Line engine, and unload them.

Of course, that involved reasonable coordination between ship movement and rail movement. It would at any rail change, whether operated under civilian or military conditions. There is nothing about that exceptional or unusual. However, I do want to make that point very plain to the Commission: There is not a scrap of evidence in this case that any carrier ever complained that the actual handling of the cars was in any way inconvenient to it. It never complained that any car was detained on that pier an unreasonable time. It never complained that it could not get its cars on and off the piers as it saw fit to do. That is purely a red herring in this case which is purely without support in the evidence.

#### REBUTTAL ARGUMENT OF BENJAMIN J. BROOKS.

Mr. Brooks. Counsel for the carriers talked about principles involved, and that if the plaintiff wins this  
698 case, it would be upsetting a lot of the principles with respect to allowances at piers and ports, and would be contrary to the *ex parte* 104 cases. That is not so at all. Not at all, not at all.

As I pointed out in my argument in chief, this situation here is quite different from that involved in the terminal cases involving industries. There, there is a question of just how far the line-haul rate actually extended. In a good many of those cases, of course, it hinged on how far the industry would permit the carriers to go at their own convenience and without interference, and all.

We have nothing like that here. That part of the movement would be analogous to the switch movement here. That

is between the line-haul movement, and the piers. However, here, that issue is not involved.

Commissioner Mahaffie asked me a question at the last argument, as to whether or not—I think it was along this line—whether or not the government might not have a claim for rendering that switching service, and I answered that I thought probably they did.

However, that is not in here. That brushes the *ex parte* 104 cases aside. What we have here is the question of wharfage and handling, which are definitely and positively included in the single factor, ship-side rate.

What does single factor mean? It means one 699 factor, one rate, including both line-haul and terminal services.

Commr. MAHAFFIE. If the switching service was not an obligation of the line-haul carrier, and I understand that was taken over by the War Department and performed by it, and it makes no claim on account of that, now is that not about a 2 mile interruption from where the line-haul service actually ends and where you want the unloading performed?

Mr. BROOKS. It is something in the neighborhood of 2 miles.

Commr. MAHAFFIE. Well, 2 miles, then, where the line-haul service ends.

Mr. BROOKS. That is true.

Commr. MAHAFFIE. And the place where you want the loading performed by the carrier or an allowance made?

Mr. BROOKS. I am not asking that the carriers perform the unloading: they say that in effect it had to be an Army operation. The majority of the Commission so found in its report that obviously anything but operation by the complainant was impracticable. My point is this, your honor, that that wharfage handling is in that single factor rate.

Now then, go back to that wharfage case in 157 ICC, where the question came up about separating the line-haul rates and the wharfage in handling, and terminal charges.

What was the first question that the Commission passed on? The adequacy of the facilities held out by the carriers. The 700 adequacy of the facilities, and the Commission found, then, that the facilities were adequate.

The next question they considered was anybody being injured. They stated in the report that opportunities were afforded the interested parties to show injury, but no substantial injury was shown.

The question then came up, should the carriers, in the light of all that, be obliged, after they have supplied adequate facilities, to turn traffic that they could handle at those facilities over to the municipal or private pier facilities. The Commission said no. So long as the carriers hold out these facilities and they are adequate and the service is satisfactory, no. We will tell these private pier operators—as you told them in the Weyerhæuser case and there too you found the pier facilities were adequate. You said to the private pier people, if you want it, use your own private piers, you are going to have to pay twice. You said that in the wharfage case in 157, ICC. You pay once in the single factor shipside rate, and you again pay when you perform the services.

Commr. MAHAFFIE. Do you and Mr. MacGuineas differ as to the obligation of the railroad in these circumstances as to actually performing the unloading?

Mr. BROOKS. I take their railroads at their word. They say they just could not have done it. It would have to be an Army operation, with all of these complications that were involved there. My point is this: the railroads were 700A not in a position to render adequate service. Therefore, under the Commission's discussion, findings and all in the wharfage case in 157, ICC, if they had had the instant situation before them at that time, they would have ordered a separation, or an allowance.

The decision there, your honor will recall, was 6 to 5 in favor of not separating. Here very definitely they would have ordered the separation. However, I am not arguing for separation of the terminal charges from the line-haul rates. No, I very definitely take the position that there should be a continuance of those single factor ship-side rates, even though in the majority report and the last report it was stated that I did argue for separation of charges.

If you got that impression, I am sorry because I did not intend that at all.

Just one more word on this question of adequate facilities: It is admitted by everybody that the railroads are not in a position to serve. That being true, it was of necessity, there had to be a change in the charge. They had been making the holding out, their agent had performed this wharfage service and so forth and the agent had paid 4 cents 100 pounds. The railroads did not get that money, they got it and passed it on to the agent.



Now, what is the situation? The Army furnished the wharf, performed the service and the railroads keep the 4 cents, not on normal traffic but on 10 times normal.

701 COMM. PATTERSON. Are the local rates any less than the rate charged here with this service included?

MR. BROOKS. By a local rate, your Honor, you are talking about a domestic rate.

COMM. PATTERSON. That is right.

MR. BROOKS. On that score, of course, from trunk line territory, your rates are to Norfolk, export-import rates are substantially on the domestic level? It is to and from central territory where you have the lower rates on export and import traffic, and there, of course, you have Norfolk on the Baltimore basis and has been so for years and years.

COMM. PATTERSON. Then certain rates are the same as these rates were without this service included, and those rates are not unreasonable are they.

MR. BROOKS. No, because I think those domestic rates are on the basis the Commission prescribed. However, as the Commission has said time and time again, domestic rates are not necessarily the yardstick for export rates.

COMM. MAHAFFIE. You suggest a finding that these export rates are unreasonable to the extent of 4 cents?

MR. BROOKS. No, sir, I will come to that a little later. It is a question of unreasonable practice rather than unreasonable rates.

The Commission told the railroads, "We will protect you and your facilities so long as they are adequate to 702 take care of the job." They were adequate in normal times. When war-time came along, they were no longer adequate.

In that connection, I cited in my reply brief dated November 15, 1945, I cite several cases where the Commission has found that because of war-time conditions, export rates were found to be reasonable and not on the tariff involved which had been charged the full domestic rate. The Commission said that because of the war-time conditions, we find the export rates should be charged here.

You have the same kind of a situation here. It is a war-time emergency situation.

Now on this question of the private piers and private property and the fear of the carriers that this might spread, there is absolutely no foundation for that statement.

Your situation here is not at all comparable to a private pier operator with private goods or a shipper building a private pier and taking traffic away from the railroad piers.

No. The government took over the principle piers at Norfolk. They used them temporarily, and now they are back in the hands of the railroad or their agents and are being used again. There is nothing at all to that point.

Of course, there is the point of the wharfage charge of 1 cent. There is no point to that. That is included in the single-factor, ship-side rate.

The Army is now providing the wharfage, so they  
703 are entitled to the 1 cent out of the single-factor ship-side rate.

On this question of many commodities not being caried, the wharfage absorption allowances, that is taken into consideration in the making of the rates on those allowances. This rate here considers commodities on which wharfage is included on the single-factor ship-side rates, and in which the railroad agent, if continued in charge, would have performed that service rather than the Army.

On the question of the rates being depressed, no. The only evidence in the case on that score is the showing with respect to the distances and the measure of the class rates to and from central territory, where, as everybody knows, the Norfolk rates have been on the same basis as Baltimore for a longer period of time than I have been here on this earth, and I am white-headed now. Maybe not an old man but beyond the 50 year mark.

In that connection, as I point out in my brief, the Commission has, in a number of cases, prescribed rates to and from Norfolk on export-import traffic on the same level as Baltimore. It just followed as a matter of course, that it would so be.

In at least one case, the Commission prescribed the same rate from Norfolk as from Baltimore on import traffic to points in central territory, and awarded reparations from Norfolk on the same basis as on traffic from Baltimore.

There is the King Powder Company case 61, ICC at 459.

Now the question here is not whether or not the rates  
704 are reasonable maximum rates. The question has to do with an unreasonable practice.

In my latest brief or petition at pages 17 and 18, I cover that point. I want to direct your attention here to one case that went to the Supreme Court in the Adams versus Mills case, 286 U. S. at 397. The Supreme Court said, "the question of the issue is not the reasonableness of the charge but the lawfulness of the practice."

In Alberts Milling Company case, 256 ICC 491, the Commission said at page 499, "It is clear that the aggregate of

the line-haul rate of 25 cents and the switching charge of \$6.44 is not inherently unreasonable.

But just the same, the Commission found it to be an unreasonable practice, and awarded reparations.

Now, the question of public interest was not even mentioned in the majority report.

Very definitely here the question of public interest should play a dominant part. In my brief I refer to that Santa Fe case, 232 U. S., where the Supreme Court held that whatever facilities and services the carriers were obliged to perform, they have a right to supply for themselves.

The Supreme Court also held there that the question of the interest of the public must be taken into consideration, and here, when you take into consideration the interests of the public, including the railroads, if you please, very definitely what was done, the government taking over and operating the piers, was in the public interest, and the public should not be obliged to pay for it.

I thank you.

#### REBUTTAL ARGUMENT OF DONALD B. MACGUINEAS

Mr. MACGUINEAS. Mr. Commissioner, may I make one statement with respect to Mr. Brooks' position, with respect to the government.

He is here as *amicus curiae* only. He is not speaking for the government. If he stated as I understood him to state in response to Commissioner Mahaffie's question, that the government concedes that the switching service had been taken over by the government, that is not at all the government's position, we take the position that we were getting the so-called switching service, that is, bringing the cars actually onto the piers. We have no complaint about that, we were getting that by use of the Belt Line engine. There is no interruption of service in this case at all.

I also want to make it clear that the carriers could have performed this service at the piers if they had made a bona fide effort to do so.

Commr. PATTERSON. It was at your direction, by holding the cars out.

Mr. MACGUINEAS. Yes, but I say there was no interruption of service. We never contended that there was.

Commr. AITCHISON. The proceeding will be taken under advisement and the Commission is adjourned.

(Whereupon, at 12:20 o'clock p. m., oral argument in the above-entitled matter was closed.)



708 In the Supreme Court of the United States  
*Statement of Points to be Relied Upon and Designation of Parts of the Record Necessary for Consideration Thereof*

Filed Oct. 5, 1948

1. Now comes the appellant in the above-entitled cause and for its statement of points upon which it intends to rely in its appeal to this Court adopts the points contained in its assignment of errors heretofore filed herein.

2. The record in this cause as filed in this Court pursuant to appellant's amended praecipe to the Clerk of the United States District Court for the District of Columbia is necessary for the consideration of the foregoing points and appellant designates said record for printing by the Clerk of this Court.

Dated this 4th day of October, 1948.

PHILIP B. PERLMAN,  
*Solicitor General.*

709 I hereby certify that a true copy of the attached Statement of Points to be Relied Upon and Designation of Parts of the Record Necessary for Consideration thereof was this day served upon the following counsel by mailing to each of them a true copy of said document:

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DAVID O. MATHEWS,

*Special Assistant to the Attorney General,*

Department of Justice, Washington, D. C.

Dated this 4th day of October, 1948.

710 In the Supreme Court of the United States

*Appellees' Designation of Additional Parts of the  
Record for Printing.*

Filed Oct. 14, 1948

Now come the Interstate Commerce Commission, Appellee in the above entitled case, and The Pennsylvania Railroad Company, The Virginian Railroad Company, Southern Railroad Company, Atlantic Coast Line Railroad Company, Seaboard Air Line Railroad Company, and Norfolk Southern Railway Company, intervenor-appellees, and designate the following additional parts of the record in this cause, as filed in this Court, for printing by the Clerk of this Court:

I. The following portions of the certified copy of the record made in the proceedings before the Interstate Commerce Commission, entitled *United States v. Aberdeen & Rockfish Railroad Co., et al.*, Docket No. 29117:

1. The Complaint to the Commission.

2. The stenographer's minutes of the hearing before the Interstate Commerce Commission at Norfolk, Virginia, on July 18 and 19, 1944, pages 1-350, inclusive.

711 3. Exhibit 1.

4. Exhibit 3, pages 1-11 and 15-17, inclusive.

5. Exhibit 4, pages 1-9, 17-23, and 26-46, inclusive.

6. Exhibits 8 and 9.
7. Exhibits 12-17, inclusive.
8. Exhibits 20, 21, and 23.
9. Exhibit 27, pages 1-5, inclusive.
10. Exhibit 28.
11. Exhibit 33.
12. The Examiner's proposed report.
13. The stenographer's minutes of oral argument on April 5, 1945, pages 351-406, inclusive; on April 3, 1946, pages 407-494, inclusive; on November 6, 1946, pages 495-566, inclusive.

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folk Southern Railway Company.*

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*Attorney for Southern Railroad  
Company.*

712 I, DANIEL W. KNOWLTON, certify that copies of the foregoing Appellees' Designation of Additional Parts of the Record for Printing, were this day mailed to the following persons:

David O. Mathews, Esq.,  
Special Assistant to the  
Attorney General,  
for Appellant, United States  
of America.

Herbert A. Bergson, Esq.,  
Assistant Attorney General,  
for United States of America,  
defendant.

DANIEL W. KNOWLTON,

*Chief Counsel,*

*Interstate Commerce Commission.*

Dated this 13th day of October, 1948.



713      Supreme Court of the United States  
*Order Noting Probable Jurisdiction—*  
*November 8, 1948.*

The statement of jurisdiction in this case having been submitted and considered by this Court, probable jurisdiction is noted.

